

CA20N

Z 1

-83H021



Ontario

GOVT PUBNS

ROYAL COMMISSION OF INQUIRY INTO CERTAIN
DEATHS AT THE HOSPITAL FOR SICK CHILDREN AND
RELATED MATTERS.

Hearing held
8th floor
180 Dundas Street West
Toronto, Ontario

The Honourable Mr. Justice S.G.M. Grange

Commissioner

P.S.A. Lamek, Q.C.

Counsel

E.A. Cronk

Associate Counsel

Thomas Millar

Administrator

Transcript of evidence
for

April 4, 1984

VOLUME 125

OFFICIAL COURT REPORTERS

Angus, Stonehouse & Co. Ltd.,
14 Carlton Street, 7th Floor,
Toronto, Ontario M5B 1J2

595-1065



ROYAL COMMISSION OF INQUIRY INTO CERTAIN
DEATHS AT THE HOSPITAL FOR SICK CHILDREN
AND RELATED MATTERS.

Hearing held on the 8th Floor,
180 Dundas Street West, Toronto,
Ontario, on Wednesday, the 4th day
of April, 1984.

- - - -

THE HONOURABLE MR. JUSTICE S.G.M. GRANGE - Commissioner
THOMAS MILLAR - Administrator
MURRAY R. ELLIOT - Registrar

- - - -

APPEARANCES:

P.S.A. LAMEK, Q.C.)	Commission Counsel
E. CRONK)	
D. HUNT)	Counsel for the Attorney
L. CECCHETTO)	General and Solicitor General
	of Ontario (Crown Attorneys
	and Coroner's Office)
I.J. ROLAND)	Counsel for The Hospital for
M. THOMSON)	Sick Children
R. BATTY)	
B. PERCIVAL, Q.C.)	Counsel for The Metropolitan
D. YOUNG)	Toronto Police
K. CHOWN	Counsel for numerous Doctors
	at The Hospital for Sick
	Children
F. KITELY	Counsel for the Registered
	Nurses' Association of Ontario
	and 35 Registered Nurses at
	The Hospital for Sick Children



APPEARANCES: (Continued)

J. SOPINKA, Q.C.)	Counsel for Susan Nelles -
D. BROWN)	Nurse
G. R. STRATHY)	Counsel for Phyllis Trayner -
E. FORSTER)	Nurse
J.A. OLAH)	Counsel for Janet Brownless -
A. ARNOLD)	R.N.A.
B. KNAZAN	Counsel for Mrs. M. Christie -
	R.N.A.
M. MANNING, Q.C.)	Counsel for Mr. & Mrs.
S. LABOW)	Gosselin, Mr. & Mrs. Gionas,
	Mr. & Mrs. Inwood, Mr. & Mrs.
	Turner, Mr. & Mrs. Lutes,
	and Mr. & Mrs. Murphy
	(parents of deceased children)
F.J. SHANAHAN	Counsel for Mr. & Mrs. Dominic
	Lombardo (parents of deceased
	child Stephanie Lombardo);
	and Heather Dawson (mother of
	deceased child Amber Dawson)
W.W. TOBIAS	Counsel for Mr. & Mrs. Hines
	(parents of deceased child
	Jordan Hines)
J. SHINEHOFT	Counsel for Lorie Pacsai and
	Kevin Garnet (parents of
	deceased child Kevin Pacsai).

Digitized by the Internet Archive
in 2024 with funding from
University of Toronto



INDEX OF WITNESSES

<u>NAME</u>	<u>PAGE NO.</u>
<u>NELLES</u> , Susan; Resumed	8351
Cross-Examination by Mr. Strathy (Cont'd)	8351
Cross-Examination by Mr. Hunt	8407

INDEX OF EXHIBITS

<u>No.</u>	<u>Description</u>	<u>Page No.</u>
394	Handwritten notes re Justin Cook.	8504



A.1

BmB. 1

jc

2

--- Upon commencing at 10:00 a.m.

3

THE COMMISSIONER: Yes, Mr. Strathy.

4

MR. STRATHY: Thank you.

5

SUSAN NELLES, Resumed

6

CROSS-EXAMINATION BY MR. STRATHY (CONTINUED):

7

Q. Miss Nelles, you mentioned at the end of the day yesterday your concern perhaps in retrospect about the condition of Baby Pacsai when you returned to him after the Manojlovich arrest. I would like to ask you a few questions to begin with about Baby Pacsai.

11

12

First of all, that baby was in Room 431 with some other babies, is that right?

13

14

A. That's right.

15

Q. But the only baby you had in 431 was Pacsai?

16

A. Actually assigned to me, yes.

17

18

Q. Yes. That was the only one under your direct responsibility?

19

20

A. Well, I had the medication and treatments for the other children in the room as well.

21

22

Q. I see. And Baby Pacsai as I understand it was not on shared nursing care nor was he on constant nursing care?

23

24

25

A. No, he was not.



A.2

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q. And am I correct that when you had a baby who was in that situation, that is, neither on constant or shared it was quite permissible for you to leave the child alone for a period of time?

A. Certainly, yes.

Q. So for example if it came time for your break and you had a baby, a particular baby who was not on either of those intensive methods of care, you could leave that child without being relieved?

A. That's right.

Q. Do I also understand correctly that constant nursing care and shared nursing care were only done on doctor's orders; that is, it was up to the doctor to decide?

A. They had to write an order for constant care or shared care nursing, yes.

Q. So, it was up to the doctor to decide whether a particular child's condition warranted that?

A. Well, I think it was usually the physician in discussion with the head nurse.

Q. But the final order came from the doctor?

A. Right.



A.3

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q. Now, do you recall that night, that is, the night in which Baby Pacsai died, do you recall what other nurse had babies in Room 431?

A. Mrs. Lyons had the rest of the babies in that room.

Q. What is her first name?

A. Yvonne.

Q. Yvonne. And were the babies that she had in 431 - how many were there, do you recall?

A. I believe it was two or three.

Q. Were those babies on either constant or shared nursing care?

A. No, they were not.

Q. Now, you left Pacsai's room, 431, at the time you heard Manojlovich's arrest?

A. Right.

Q. And you went to the Manojlovich's room and you stayed there for a period of time throughout the arrest?

A. That's right.

Q. And did not return to Pacsai until after Baby Manojlovich had died and after you had attended to the baby after the death?

A. Right.

Q. I'm sorry, I may have just not



A.4

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

picked up from your evidence how long it was that you were with Baby Manojlovich?

A. I'd say that I was gone from Room 431 for about an hour.

Q. Now, when you left Room 431 to go to Baby Manojlovich, do you recall whether Mrs. Lyons was in the room with her babies?

A. I don't remember.

Q. It's possible I take it that she was there?

A. Yes, but she also had children in another room as well as 431.

Q. But you don't recall whether she was there at the time?

A. I don't remember, no.

Q. What about when you returned after the Baby Manojlovich's death, was Mrs. Lyons there then?

A. Yes, I believe she was.

Q. Well now just in respect of your first answer that you don't recall Mrs. Lyons being there when you left, I'd like to read to you if I may a portion of the evidence from the preliminary inquiry. I'm referring to Volume 8, page 109, Mr. Commissioner. This is the evidence of Mrs. Lyons at your preliminary



A.5

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

inquiry and I believe of course that you sat through
the evidence yourself at the preliminary inquiry?

A. Yes, I did.

Q. You may not recall this piece
of evidence because it was a long time ago for you but
let me read it to you. This is at line 20, page 109,
the question by the Crown Attorney to Mrs. Lyons:

"Q. Do you remember a baby who died
down the floor ... "

and they called the child Sanojlovich.

"A. Yes.

"Q. And when that baby died did a
lot of the nurses go down to where he
was?

"A. Yes.

"Q. Do you know if Susan Nelles went
down there, did she go to where
Manojlovich was?

"A. Yes, I think she did.

"Q. Did you stay in Room 431 when she
left?

"A. Yes, I did.

"Q. Did anyone else come in while she
was gone to look after Baby Pacsai."
Now, I think that is a misprint because



A.6

1

2

I think it was Manojlovich that you went to look
after, a misstatement.

3

4

"A. No.

5

"Q. What condition was Baby Pacsai in
when she was gone?

6

7

"A. He was sleeping.

7

8

"Q. He was sleeping?

8

9

"A. Yes.

10

"Q. Did she come back after the
Sanojlovich baby died?

11

"A. Yes, she came back.

12

"Q. What did she do when she came
back?

13

"A. I can't remember.

14

"Q. Did you see her giving Kevin Pacsai
anything to drink or eat?

15

16

"A. I can't remember.

17

"Q. Did you see her give any drugs
to the Pacsai baby?

18

19

"A. I can't remember."

20

Now, it appears from Mrs. Lyons'

21

evidence that she was in the room when you left to go
to Baby Manojlovich and it appears that she was also
there when you returned and it appears, at least on
my reading of it, that she was there throughout the

22

23

24

25



A.7

1

2

time that you were away. Did that refresh your memory at all as to whether Mrs. Lyons was in the room when you left to go to see Manojlovich?

4

5

A. I don't remember her being - as I say I don't remember whether she was there or not when I left.

6

7

8

9

10

11

12

Q. Now, after Baby Manojlovich died you mentioned that Mrs. Trayner was present at the arrest, she was standing at the door and she went off from time to time. I gather at arrest you usually did have someone who was a runner to go and fetch things that were needed in the arrest?

13

14

15

A. Sometimes, yes.

16

17

18

19

Q. After the baby died you mentioned that you attended to the baby, preparing the child for viewing by the parents?

20

21

22

23

24

25

A. No, I did not.

Q. I'm sorry, excuse me. Perhaps I went too far. Do I understand correctly that you cleaned up the child after the arrest?

A. No, I did not, I helped clean up the room.

Q. I see, excuse me. Do you know who actually did clean up the child after the arrest?

A. I would imagine it would have



A.8

1

2

been the nurse assigned to her, which was Debbie
Harwood-Jones.

3

4

Q. But you are simply guessing I
take it, you don't know for a fact?

5

6

A. Well, I remember that Miss
Harwood-Jones was with the mother, so I would assume
as I said that it is her patient and that's normally
her role.

7

8

9

10

Q. Let's just try and be clear. I
don't want you to guess, if you don't know it would
be more helpful to say that you don't know.

11

12

A. No, I don't know for sure.

13

14

15

16

Q. Thank you. If I could turn to
the Miller child for a moment. You mentioned that,
I think it was while you were attending to Cook,
Phyllis Trayner came in with the 1 o'clock gentamicin
for Miller?

17

A. Right.

18

19

20

Q. and your recollection is that
she had with her both the syringe filled with the
gentamicin and the vial itself?

21

A. Right.

22

Q. And it was her suggestion that
she give the medication to the child at that time?

23

A. As I say, I don't remember

24

25



A.9

1

2

whether I actually asked her to give the medication
or whether in fact she did it on her own accord.

4

5

6

Q. You wouldn't think it particularly
unusual that she did it on her own accord since she
knew that you were busy with Cook?

7

8

9

10

11

A. Not at all.

12

13

14

15

16

17

Q. And with respect to her actually
bringing the syringe and the vial to show you, would
it be fair to say that she might well have done that
simply to make sure that it registered with you what
she was doing?

18

19

A. Certainly.

20

21

22

23

24

25

Q. Would it be also fair to say
that in light of the concern about Pacsai and the
suggestion that there had been some sort of medication
error with Pacsai and an inquest with Pacsai that
perhaps everyone was a little bit, if you will,
uptight about the medications at the time?

A. Could be, I don't recall feeling
that way.

Q. It is certainly possible?

A. It's a possibility.

Q. That's the way other people were
feeling?

A. It's a possibility.



A.10

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q. Now, you testified concerning the lock-up of the digoxin. You mentioned that, I think that Mrs. Trayner asked you to do that?

A. Right.

Q. Do you recall, are you able to recall today the exact words to you?

A. I just remember that she asked me to lock up the digoxin.

Q. All right.

A. It was my feeling that she said the IV digoxin.

Q. All right. Is it possible that she may have simply said lock up the digoxin and that's as far as she went and that you interpreted it to mean the IV digoxin; is that possible?

A. It's possible.

Q. You or she might have come to the same conclusion that the oral elixir had been checked already and everything was okay with it.

A. Phyllis or myself?

Q. Yes, you may have both assumed the same thing.

A. Could have been.

-



B
DP/cr

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q. Turning to Baby Cook, Miss Nelles, you testified that there was Inderal or Propranolol taped to the bed and I just want to be clear about your recollection of what it was that was taped to the bed. Again, if you are uncertain I think it would be most helpful to the Commission if you voiced that uncertainty today.

Did I understand that there were two syringes taped to the bed?

A. That is what was written in my notes that I prepared almost just a week after - sorry, a week and a half or so after I had recorded that there were two. Now, I was not sure. I cannot remember exactly but that would be the closest recollection as that was written shortly after.

Q. So the notes, when you say two to the Commissioner today and yesterday, you are basing that on what you wrote down two or three years ago?

A. Right.

Q. That was refreshing your memory, in effect?

A. Yes.

THE COMMISSIONER: I think it is more than that. I think it is past recollection recorded



1
2 as opposed to present recollection revised.

3 MR. STRATHY: That is right. I do not
4 think those notes have actually been produced. I
5 think we have had the benefit of the other notes
6 but not of these.

7 THE COMMISSIONER: We did have the other
8 notes. These have not been produced.

9 MR. STRATHY: I wonder if they may be
10 produced. I wonder if the witness is prepared to
11 waive the privilege.

12 MR. SOPINKA: I suggest that she read
13 from the notes anything relating to that matter
14 because there are matters in the notes that relate
15 to Phase II and I am not taking the same position
16 with respect to those. I do not think, for that
17 reason, that they should be produced in the same
18 way as the others. I think my friend's purpose will
19 be adequately served if the witness reads from the
20 notes anything that relates to the matter that he
21 is questioning her about.

22 MR. PERCIVAL: Mr. Commissioner,
23 certainly from the standpoint, when I get to it there
24 is going to be a motion that they be produced because
25 it seems to me, and I will have authority for you at
that time, but my friend by producing the two notes



1
2 that have already been, it is my submission that
3 having waived the privilege with relation to those,
4 he has waived the privilege to all others. It seems
5 to me it is the best evidence, contemporaneous with
6 the event and refreshes her recollection. I have
7 heard so far about eight or nine babies that she has
8 no recollection of. I will make my motion when I
9 am up there.

10 MR. STRATHY: I will leave it to Mr.
11 Percival to do that. I would like to have two things
12 done. One would be for the witness to look at her
13 notes and indicate what it is that the notes record
14 and, secondly, if there is anything else recorded in
15 the notes of which she does not have an independent
16 memory that she advise the Commissioner of that as
17 well, with respect to Cook.

18 THE COMMISSIONER: That is putting a
19 fairly heavy burden on the witness. I think we had
20 better let Mr. Sopinka answer that question for you.
21 Are you satisfied with that solution?

22 MS. KITELY: Mr. Commissioner, before
23 Mr. Sopinka responds to your question this issue came
24 up with one of the previous nursing witnesses and I
25 think it was Mr. Hunt who took the position that if
the witness looked at any part of the statement when



Nelles, cr.ex.
(Strathy)

1
2 she was on the stand then the entire statement had
3 to go in.

4 THE COMMISSIONER: He may have taken
5 that position but it is not a position I take.

6 MR. SOPINKA: It is wrong in law.

7 THE COMMISSIONER: Yes.

8 MS. KITELY: As I recall, if my memory
9 serves me correctly, it is my submission that is what
10 occurred on that occasion. There cannot be one law
11 for the previous nursing witness and a different one
12 for this one.

13 THE COMMISSIONER: No, no. There comes
14 a time when there has been sufficient reference to
15 either a statement or something of that nature and if
16 it is in the hands of some counsel then it should
17 be in the hands of others. Those were statements that
18 were made. The notes that they made themselves, if
19 they made them themselves for the purposes of
20 litigation, I don't know why they ever become
21 admissible. They make those, unless someone somehow
22 or other has a copy of them and cross-examines them
23 on it and wants to show that there is something
24 different in the notes.

25 MS. KITELY: My point, sir, is not
the authorship of the document but the witness while



1
2 in the stand is looking at the document and if that
3 is done, and to be consistent with your earlier
4 position, sir, in my submission the document should
5 be put in.

6 THE COMMISSIONER: It is quite possible
7 that under those circumstances counsel can look at
8 it but that doesn't make it admissible.

9 MS. KITELY: I understand.

10 THE COMMISSIONER: If a policeman
11 refers to his notes anyone is allowed to go up and
12 take a look at those notes and say, well, now, you
13 did not say this, you did not say that, and if in
14 fact it is contrary to his evidence can make them
15 there as an exhibit, not as evidence. We are now
16 getting very formal, but not as evidence but merely
17 as an indication of some misstatement by the witness
18 on the stand.

19 MS. KITELY: I understand, and if that
20 is the resolution that you are pursuing then I would
21 not have any difficulty with that. I gather that
22 while you and I have been having this interchange
23 that Miss Nelles has been in fact looking at the
24 statement on the stand and that may be the point
25 that we are at.

THE COMMISSIONER: Mr. Sopinka, have



Nelles, cr.ex.
(Strathy)

1
2 you any objection to Mr. Strathy looking at these
3 notes?

4 MR. SOPINKA: I don't think he wants
5 to.

6 THE COMMISSIONER: All right, if he
7 doesn't want to --

8 MR. SOPINKA: What I said, Miss Nelles
9 will read anything that relates to the matter that
10 he is questioning her about at the moment. I will
11 undertake if there is anything in them relating to
12 Phase I that has not been covered by her in her
13 very thorough examination by Mr. Lamek, then I will
14 do it in re-examination.

15 THE COMMISSIONER: All right. Now,
16 Mr. Strathy, if you are content with that, that is
17 fine, that solves it. I do not think you - you can
18 make another motion at another time when you are
19 examining her, Mr. Tobias.

20 MR. TOBIAS: I will reserve my right
21 to do that.

22 THE COMMISSIONER: I am now finding
23 the problems are easier if I solve them one at a
24 time. I am going to solve this one right now. If
25 Mr. Strathy is willing to leave it at that, let us
proceed.



1

2

MR. STRATHY: Thank you.

3

4

Q. Can you tell us what your notes tell you, Miss Nelles, about the syringes.

5

A. (reads from notes)

6

7

8

9

"When I arrived in 418 I did notice that there were two syringes of propranolol, one milligram per cc drawn up and taped along with the empty vials to the end of the bed."

10

11

12

Q. Do your notes say anything or do you have any recall of whether there were any labels on these syringes?

13

14

A. I believe they were labelled, yes.

15

16

17

18

Q. Is that from your notes or just from your recollection?

19

20

21

A. From my recollection.

22

23

24

25

Q. Do you recall what the labels said?

A. I believe they said that it was one milligram per cc of propranolol and was signed - it was perhaps signed by who had drawn it up.

Q. Do you have a recollection of who it was who signed it?



1

2

A. Not that one, no.

3

Q. Sorry?

4

5

A. Not those, no. I specifically remember that the syringe in the fridge that I used was signed by Sui Scott.

6

7

8

9

Q. Do you have any knowledge as to, let us start with personal knowledge from your observation as to who it was that did draw up those syringes and who it was had taped them to the bed?

10

11

A. I would have no way of knowing.

8

They were there when I arrived.

12

13

Q. Do you have any knowledge other than personal knowledge, Miss Nelles, as to who it was that did that?

14

15

A. No, I don't.

16

17

18

THE COMMISSIONER: I don't know quite what personal knowledge means. Does personal knowledge mean that you observed it or that it was something that somebody told you?

19

20

MR. STRATHY: I was trying to distinguish it from hearsay.

21

22

THE COMMISSIONER: Do you know from personal observation, and the answer to that is no?

23

24

25

THE WITNESS: Right.

THE COMMISSIONER: Secondly, did anyone



1

2

tell you who did it?

3

THE WITNESS: No.

4

THE COMMISSIONER: Then that answer
was no and I was right.

5

6

MR. SOPINKA: And she has been
thoroughly instructed in the laws of evidence.

7

THE COMMISSIONER: Good.

8

9

10

11

MR. STRATHY: Q. I have never quite
understood about this Propranolol or Inderal being
taped to the bed. As I understood it Propranolol
is not an emergency type medication?

12

13

A. Maybe it would have been viewed
as an emergency drug considering the condition of
this child.

14

15

16

17

Q. When you went in to Cook, into
the room, was it your understanding that the
Propranolol was taped to the bed in case you needed
it in a hurry. Was that the reason?

18

19

A. Not that I needed it in a hurry
but the physician would need it in a hurry, yes.

20

21

Q. Was that something that had
happened before in your experience, that medication
had actually been drawn up and taped to a bed?

22

23

24

25

A. I can recall as I said before
medications being drawn up and sitting by the bed,



1

2

not specifically taped to the bed but they were at
the bedside, yes.

4

Q. To be ready in case of an --

5

A. Of an emergency, yes.

6

7

Q. Would it be fair to say it
was not a particularly common thing for that to
happen?

8

A. It is not common, no.

9

10

11

- - - - -

12

13

14

15

16

17

18

19

20

21

22

23

24

25



1

C
DM/cr

2

Q. You testified that you, after

3

Cook had been admitted, that you took Baby Cook to
the echo lab?

4

A. That's right.

5

6

Q. Do you have a recollection of

7

how it was that you took Cook, in other words did
you carry Cook in your arms, did you wheel him in

8

a bed, how did you pick the baby up?

9

A. I can't remember.

10

Q. I beg your pardon?

11

A. I can't remember.

12

Q. How old was Baby Cook?

13

A. He was about three and a half

months old.

14

Q. With a baby that age would it

15

be quite possible that you would in fact carry the
child?

16

17

A. Yes, it would be.

18

Q. If I suggested to you it is

19

more likely than not that you did carry the child
to the echo lab, would you be prepared to agree

20

with that?

21

A. I really can't remember whether

22

I took him in his bed, or whether I carried him.

23

Q. Okay, thank you. Now then you

24

25



1

2

mentioned that with respect to Cook, Phyllis
Trayner gave the child the second feeding.

3

4

A. Are we talking Saturday night
now?

5

6

Q. Yes.

7

A. Yes.

8

Q. And while that was taking place
you went into the nursing station, you went for a
break into the nursing station?

9

10

A. Yes, I did.

11

Q. And that was right next to the
baby's room, wasn't it?

12

A. Right.

13

14

Q. And was that simply for your
break?

15

A. Yes, it was.

16

Q. What was the condition of Baby
Cook when you left to take your break, do you recall,
was he awake or was he asleep?

17

18

A. Mrs. Trayner was feeding him.

19

Q. So the feeding had started?

20

A. Right.

21

Q. How would you describe Baby
Cook at that time, was he fretful, difficult to
feed?

22

23

24

25



Nelles, cr.ex.
(Strathy)

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

A. I do not know because I was not feeding him.

Q. No, but from what you saw as to what Phyllis was doing when you left her with the child, do you recall --

A. She was holding him and feeding him and he was drinking.

Q. He was feeding at the time was he?

A. Yes.

Q. How long was it that you were in the nursing station for your break, in total?

A. About 45 minutes.

Q. During that time do you recall going back to look in on Cook from time to time?

A. I went to the doorway, yes.

Q. The doorway of the Cook room?

A. Yes.

Q. And why was that?

A. Because I wanted to see how he was.

Q. And do you recall when that was in your break, was it midway through, was it more than once?

A. I believe it was just shortly



1

2

after I had left the room.

3

Q. And do you recall going in

4

more than once during your break?

5

A. No, I don't remember going

6

more than once.

7

Q. I take it you just don't have

8

a memory of it, but it is possible you may have gone
in more than once to check?

9

A. I don't remember going more

10

than once, no.

11

Q. Do you recall when you did go

12

in that the child was fretful and restless and
perhaps crying?

13

THE COMMISSIONER: I am sorry?

14

Q. I am sorry, when you did go to

15

the door, do you recall that the child was fretful,
restless and possibly crying?

16

17

A. I believe that is why I went

18

to the room, because I think I heard him crying, and
I went and stuck my head in the door and asked if he
was all right.

19

20

Q. And what did Phyllis say to

21

you?

22

A. She said he was fine.

23

Q. And what was going on when you

24

25



1

2

did go to the door, where was Phyllis?

3

A. I don't remember; she was at the bedside.

4

5

6

7

Q. Would she be likely, when you are feeding an infant that age, I would assume you would sit in an armchair or something, would you not, with the bottle?

8

A. Right.

9

10

11

Q. And do you recall whether - when you say in the bedside or at the bedside, was she sitting in a chair with Cook in her arms?

12

A. I don't remember whether she was sitting or whether she was standing.

13

14

Q. But in any event she had the child in her arms and the bottle in her arms I suppose?

15

16

17

A. I am not so sure, because as I say he was crying, so I don't remember whether she had him in the crib or whether she had him in her arms.

18

19

Q. Do you know whether the feeding had finished at the time you went in?

20

A. I don't know.

21

MR. STRATHY: Thank you.

22

THE COMMISSSIONER: Thank you, Mr.

23

Strathy. Mr. Sopinka. I take it in the ordinary

24

25



1
2 course I would be calling on Mr. Hunt and you have
3 some objection to that.

4 MR. SOPINKA: Yes.

5 THE COMMISSIONER: How long will you
6 be? I am wondering just merely about your client,
7 that's all.

8 MR. SOPINKA: Well perhaps she can be
9 asked whether she would rather stay in the witness
10 box or come back down here. Perhaps she could sit
11 beside me and give me instructions, that would be
12 better.

13 THE COMMISSIONER: Whatever you like.

14 MR. SOPINKA: Would you like to sit
15 here, Miss Nelles.

16 THE COMMISSIONER: If this gets too
17 long and boring you can leave. Anybody else who
18 feels the same way can do exactly the same thing.

19 MR. SOPINKA: I know the press will
20 be deprived of a favourite picture of theirs for
21 some 20 minutes. I think Miss Nelles will be more
22 comfortable sitting here.

23 ---Witness excused from witness box.

24 MR. SOPINKA: Mr. Commissioner, it is
25 my submission that you should rule either that the
Attorney General and the Metropolitan Police have no



1
2 status to ask questions, or that they should identify
3 their interest in this Inquiry and that their
4 questions should be limited accordingly. They have
5 never identified what interest it is that they have
6 in this Inquiry, and it is not, as suggested by
7 some newspapers, that we are seeking to stop Miss
8 Nelles from being cross-examined. She has been very
9 effectively examined by Mr. Lamek and all matters
have been gone into.

10 It is my submission that based on past
11 performance you will find that Mr. Hunt and Mr.
12 Percival will be cross-examining as an extension of
13 either the police investigation or the prosecution.
14 It is not that we don't want Miss Nelles cross-
15 examined, it is we don't want her prosecuted, that
16 has already happened. So if I fail in my motion
17 that they have no interest, then I submit that if
18 that is the direction of their questioning it ought
19 not to be permitted, and of course that can be dealt
with on a question by question basis.

20 I put my submission this way. I
21 appreciate that when they were given status there
22 were no submissions made. I don't know that they
23 ever identified their interest, they were simply
24 given status.
25



1
2 THE COMMISSIONER: They obviously have
3 status, because one of the things I have to do is to
4 investigate their conduct.

5 MR. SOPINKA: That is right.

6 THE COMMISSIONER: And the fairest --

7 MR. SOPINKA: Clearly they would be
8 given status in Phase II because their conduct was --

9 THE COMMISSIONER: Remember we just
10 divided these phases up for convenience.

11 MR. SOPINKA: That's correct.

12 THE COMMISSIONER: There was never any
13 question at all raised about that.

14 MR. SOPINKA: Exactly, so I take some
15 comfort in that because they were given status because
16 of their obvious interest in the other part of the
17 Order-in-Council, but that did not mean that they
18 had status for all purposes and were in the same
19 position as other affected parties in Phase I.

20 Now Phase I deals with how and by what
21 means the children came to their death, that is the
22 language from the Coroner's Act. The debate that
23 we had on the question that was submitted to the
24 Court of Appeal, in your Reasons you did not take the
25 position that those words were different than those
in the Coroner's Act, or that Phase I differed.



1
2 What you did say, you referred to the MacKenzie case
3 and said, well, under the Coroner's Act the Coroner's
4 Jury is not allowed to express a conclusion of law.
5 In the MacKenzie case for instance they said a
6 physician had done his job in a careless fashion,
7 and that is a conclusion of law and obviously that
8 case is distinguishable. The point was that you
9 did not hold, and I submit this was correct, that
10 those words were any different than those in the
11 Coroner's Act. So Phase I really is the same kind
12 of inquiry as a Coroner would perform.

13 Now, could anyone suggest in a
14 Coroner's Inquest that the Police would be given
15 status unless a policeman had been involved in the
16 death in some way?

17 THE COMMISSIONER: But we have to
18 accept that there are two phases to this. The
19 second phase is going to be affected by the first
20 phase, and that is why we had the first phase first.
21 If, for instance, I were to decide that all of these
22 children died of their clinical condition, this would
23 make the position of the police and of the Crown
24 Attorneys much more difficult. One of the things,
25 I would think, but now I am not going to tell them
how to conduct their case, but I certainly think



1
2 that one of the things they want to establish is
3 that these children did die, or some of them at
4 any rate of digoxin toxicity. If they do that
5 then they are at least over that hurdle as to the
6 prosecution. Now, if they don't have that, they
7 start off with that difficulty, and if I were to make
8 a finding that there was no evidence of these
9 children dying of toxicity of any kind, then why did
10 they proceed to prosecute anyone, much less your
11 client. Now surely they have an interest in
12 determining that question.

13 MR. SOPINKA: Well there may be some
14 difficulty with that. I have always viewed, in
15 Phase II, and we haven't got into it and we haven't
16 debated it, but Phase II will be concerned not with
17 what in fact is the situation but what information
18 the police had and how they acted on it.
19
20
21
22
23
24
25



D/BM/ak

1

2

3

THE COMMISSIONER: That's right,
that's right.

4

5

6

7

MR. SOPINKA: So that if for
instance you made some finding here that is
completely different than the evidence they had,
it is immaterial.

8

9

10

11

THE COMMISSIONER: But if I were
to make a finding that there really is now no
ground, and there was not then any ground for
suspecting any kind of foul play then surely they
should not have proceeded with the prosecution.

12

13

14

15

16

MR. SOPINKA: But whatever you
find in this Phase, if in Phase II they say, well,
we had this evidence and where it is fine you have
had a long Royal Inquiry and you have all sorts
of things --

17

18

19

20

21

22

23

THE COMMISSIONER: I don't see how
we could distinguish. This is the problem we are
faced with. Remember that really the police are
in every bit as difficult a position or perhaps in
many ways a more difficult position in this Inquiry
than your client is because they are - one of the
problems I am to determine is did they or did they
not behave properly.

24

25

MR. SOPINKA: They are certainly



1

2

in more difficulty in Phase II.

3

THE COMMISSIONER: Well, you won't get anything out of me that way.

5

6

7

8

MR. SOPINKA: Well, I think with respect that you have to distinguish your decision or report on this Phase that will be based on the evidence that is before you.

9

10

11

12

THE COMMISSIONER: Absolutely.

MR. SOPINKA: Whether they act properly in Phase II is dependent entirely on the evidence that they have. So that I submit with respect that you are not connected --

13

14

15

16

17

18

THE COMMISSIONER: I am not entirely prepared to accept that. If it develops that there was some foul play, whether there was some improper conduct and if it comes later I don't see that the police can be abused that much for making an intelligent guess, I don't know. Anyway, I'm not expressing an opinion on it.

19

20

21

22

23

24

25

But at this point I want you to understand it does seem to me that it is of importance to the police to establish that there was something strange going on at that Hospital at that time and if they fail to establish that their position in Phase II is infinitely worse.



1
2
3 MR. SOPINKA: Well, if you hold
4 that that is their sole interest in the Inquiry
5 that of course would limit to some extent the nature
6 of the questions that they would be allowed to ask
7 and that's what I am saying. I submit that the
8 police have to identify their interest here because
9 they are spending a vast amount of public money.
10 Under the Police Act their function is to investigate
11 crime. They are here I submit, and the direction of
12 the questions will indicate that (a) to continue
13 their prosecution or investigation and, secondly,
14 as an examination for discovery in connection with
15 the Malicious Prosecution Action. If that is what
16 they are doing then they shouldn't be allowed to do
17 it.

18 THE COMMISSIONER: No, no, if you
19 don't mind I am not going to allow either you or
20 them that purpose to examine anybody for discovery
21 for that purpose. The difficulty is that both of
22 you will have a very easy time persuading them that
23 it is not for the purposes of examination for
24 discovery and even if it is because it has some
25 relevance to one or other of the two phases.
However, go ahead.

MR. SOPINKA: Well, only in this



1
2 Phase at the moment.

3 THE COMMISSIONER: Yes.

4 MR. SOPINKA: Well then, that's
5 my submission with respect to the police. I
6 submit that they would not have any status at a
7 coroner's inquest and the language of the Order in
8 Council relating to this Phase is identical to that
9 of a coroner's inquest, then they really have no
10 status, but if they do have any status they should
11 identify it and their questions should be limited
12 accordingly.

13 Now, with respect to the Attorney
14 General, while it is true that at a coroner's
15 inquest the Crown Attorney leads the evidence but
16 that's because somebody has to do it. Here we
17 have Commission Counsel who has performed that role.
18 The Crown Attorney at a coroner's inquest is not
19 advancing the interests of the individual Crown
20 Attorneys or of the Attorney General as a minister.
21 The Crown Attorney at a coroner's inquest is
22 representing the interest of the public and here
23 that is being done by Commission Counsel.

24 So, again, I submit that the Attorney
25 General has no status but if he has a status, that
should be identified and the questions limited



1

2

accordingly.

3

Thank you, sir.

4

5

THE COMMISSIONER: I wonder, before we call on you, Mr. Hunt, is there anyone supporting the position of - yes, Miss Kitley?

6

7

MS. KITLEY: Without adding to my friend's comments we support the position taken by Mr. Sopinka.

8

9

10

THE COMMISSIONER: Yes. Anyone else? Mr. Strathy?

11

12

MR. STRATHY: Yes, I am precisely the same, Mr. Commissioner.

13

14

THE COMMISSIONER: Do you have any arguments you wish to put to us?

15

16

17

18

MR. STRATHY: Well, only this. I don't have the cases in front of me but if this Commission were to be used by the police or by the Crown Attorneys to in effect investigate a crime or crimes rather than to deal with the Phase II issues --

19

20

21

22

23

24

25

THE COMMISSIONER: Well, surely that can be dealt with in any given question. If the question is legitimate -- First of all, it has to be in this Phase, it has to be in the cause of death. But the interest, we are now concerned not about legitimacy of the question but we are concerned



1
2 about the interest of the Crown Attorney and their
3 interests as I say stems from the fact that they
4 are going to have to defend themselves in Phase II,
5 and having to defend themselves in Phase II with
6 the strike - the baseball season having started now,
7 I can say the strike or two strikes against them
8 from the fact that the Commissioner has made up his
9 mind that there was nothing at all strange or
10 unusual about the deaths of these children would be
almost impossible to overcome.

11 MR. STRATHY: Well, I think,
12 Mr. Commissioner, what Mr. Sopinka is saying is
13 that it is too much for us to deal with it on a
14 question by question basis. We are simply asking
15 that the interest of the police be defined at the
16 outset so that we have some context in which we can
17 look at the questions because it is quite possible
18 that on a question by question basis what will in
19 effect be done is an investigation of what are
believed or alleged to be criminal offences.

20 In my submission on the authorities,
21 once you start using a provincial Commission to do
22 that, to investigate a specific crime or crimes,
23 you are trenching on the federal domain and it is
24 separate and distinct.
25



1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

THE COMMISSIONER: I've got to be extremely careful what I say because the Court of Appeal is considering this problem at the moment, but that was not the conclusion I reached.

MR. STRATHY: Well, it is a separate issue with respect, it goes well beyond the naming of names question.

THE COMMISSIONER: Yes, all right. Anyone else supporting this position? Yes, Mr. Knazan?

MR. KNAZAN: I support the position, Mr. Commissioner, in reference to Mr. Strathy's point. I would suggest a resolution which is if the police and the Attorney General say that if new evidence were to be found then prosecution would follow and that they were prepared to state that no prosecution would follow against whatever witness is on the stand, that might avoid the problem.

THE COMMISSIONER: You want to stay their hand on all prosecution forever; is that the idea?

MR. KNAZAN: No, just to make sure that their purpose in cross-examining in Phase I is for the purpose you stated.

THE COMMISSIONER: Phase II. But



1

2

3

4

5

they can't say now that they will not prosecute. Do you really seriously expect the Attorney General to say I am never going to prosecute anybody with respect to this matter?

6

7

8

MR. KNAZAN: No, no, you may find evidence against someone who isn't testifying. I'm referring to a problem --

9

10

11

THE COMMISSIONER: But anybody who testifies would be relieved forever from prosecution by the simple act of testifying. I'm losing you somewhere.

12

13

14

15

16

MR. KNAZAN: Well, as Mr. Strathy says, it is a completely separate problem from the naming of names and that is whether a provincially authorized inquiry could be used to obtain evidence and circumvent the procedure.

17

18

19

20

21

So, if the police and the Attorney General are in a position to say there is no prosecution pending or contemplated against this person, that would alleviate any concerns about perhaps cross-examining in Phase I.

22

23

24

25

THE COMMISSIONER: Yes, all right, thank you. Anyone else supporting this position? Mr. Lamek, do you want to be heard on this issue



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

or not or do you want to be heard afterwards?

MR. LAMEK: Perhaps I could wait until after those who are opposing it.

THE COMMISSIONER: Yes, all right. Well now, Mr. Hunt and Mr. Percival, both of you, I would just like to tell you I hope you are duly flattered by this effort to keep you out but I am not, in all the defence I have given you, it is not to be taken that I necessarily agree that you have been as effective as they seem to have indicated. However, go ahead.

MR. HUNT: I have been waiting for this flattery for some time actually but inasmuch as it has been raised now, let me say that first of all my position with respect to the witnesses that have testified has been to cross-examine them closely on the issue of how and by what means the children died which as we all know is Term 3 in the Terms of Reference. It is not an extension of any prosecution as far as I'm concerned or my clients are concerned or certainly any police investigation. It is strictly, in my submission, within the terms of Term 3 and subject to your ruling would intend to do that, to cross-examine any witness on Phase I with a view to determining if there is anything they



1
2 can add to that question.

3 Now, you have in argument with my
4 friends indicated what my submission would be and
5 that is that Phase II and Phase I are really, as far
6 as the clients that I represent are concerned,
7 inseparable. Mr. McGee, Mr. Wiley, some of the
8 coroners were involved to a greater or lesser
9 extent during the investigation and prosecution of
10 Miss Nelles. As a result of that, I suppose one
11 could say they have information and experience which
12 may help shed some light on the matters that you are
13 asked to decide in Phase I how and by what means,
14 but that aside to say to them go away and come back
15 at the start of Phase II, as you have aptly put it,
16 it could put them in the position of starting out
17 to defend their own action with two strikes against
18 them without having any input whatsoever in Phase I.
19 That's what, in my submission, I am here for.

20 Now, in addition, one thing my friends
21 have overlooked is that I represent a number of
22 different interests here. There is the Attorney
23 General in his role as the chief law officer of the
24 Crown who has an interest in all Royal Commissions
25 called by him, there is the Attorney General in his
individual capacity as someone who may or may not have



1
2 been involved in the investigation, prosecution of
3 Susan Nelles, there is Mr. Wiley and Mr. McGee who
4 were involved and as individuals may stand in
5 jeopardy of findings that you make.

6 So, it is not quite so easy to say,
7 well, send him away or restrict him because he
8 happens to work for the Attorney General. That may
9 well be but I represent a number of different
10 interests and some of those interests in my submission
11 dictate that they be represented here in order to
12 have input into the Inquiry into Phase I.

13 My friend Mr. Knazan suggests that
14 that is only appropriate if it was indicated there
15 would be no prosecution of anyone. We are all aware
16 of what the duties of the Attorney General as the
17 chief law officer of the Crown are. If he were
18 to indicate that there would be no further prosecution
19 of anyone, regardless of what the evidence was
20 or what the source was, I think he would be in the
21 position of being criticized for having made an
22 absolutely irresponsible decision to say that at a
23 point in time before certainly the investigation is
24 complete, before this Royal Commission is complete.

25 There may be information coming from
any one of a number of sources that would compel



D12
1
2 the laying of a charge in the public interest. I
3 am somewhat puzzled by my friend Mr. Sopinka raising
4 the issue now at the 11th hour just as I'm about
5 to get up and cross-examine his client and I am
6 puzzled because less than a month ago he was giving
7 an interview to the press to CBL here in Toronto,
8 this was on March 5th, a show called "As It Happens" --

9 MR. SOPINKA: You can't rely on
10 the press.

11 MR. HUNT: And at that time he was
12 put the question by the interviewer whether there
13 was a problem in his view as there is with Mr. Alan
14 Borovoy about police lawyers participating at all
15 because he, that is Borovoy, presumes they have a
16 vested interest. Mr. Sopinka at that time was quite
17 candid with the public in his response, he said:

18 "Well, I'm not, I didn't object to
19 them being there because as far as
20 I was concerned anybody that can shed
21 light on the matter was entitled to
22 be there and I wasn't going to be too
23 fussy as to who participated."

24 But he does concede looking at it
25 objectively, Mr. Borovoy has a point and I suspect
that now that the crunch has come with his client



1

2

he sees Mr. Borovoy's point a little clearer.

3

So, it is quite clear that this is something that

4

has recently arisen. It is not a problem that is

5

publicly received by anybody for any period of

6

time and in my submission the nature of the Inquiry

7

that you are conducting really dictates that certain

8

people be represented throughout and providing the

9

questioning that is being done by the representatives

10

is not offensive in the sense that it is unfair or

11

irrelevant, that it is really the duty of those

12

representatives to ask questions and at this point

13

those questions must go to how and why the babies
died.

14

15

16

17

18

19

20

21

22

23

24

25



E
DP/PS

1
2 THE COMMISSIONER: Yes, Mr. Percival.

3 MR. PERCIVAL: Mr. Commissioner, from
4 the standpoint of the Metropolitan Toronto Police
5 Force you of course were required some eight months
6 ago and 125 sitting days to consider the rights of
7 persons interested and pursuant to Section 5.-(1)
8 of the Public Inquiries Act you have accorded to
9 the Metropolitan Toronto Police Force, you seemed
10 satisfied at that point that they had a substantial
11 and direct interest in the subject matter of the
12 inquiry and as the section went on to say, " ... an
13 opportunity during the inquiry to give evidence and
14 to call and examine or to cross-examine witnesses
15 personally or by his counsel on evidence relevant
16 to his interest."

17 Mr. Commissioner, quite apart from
18 125 commission days that we have now been involved
19 in, I have been here a substantial length of time.
20 I have cross-examined rarely and shortly on behalf
21 of the Metropolitan Toronto Police Force. The
22 record will show that. The record will also show,
23 and I don't know whether Mr. Sopinka has carefully
24 examined it, but on my calculation he has been here
25 less than 15 days of those 125 days. I would like
to end up thinking that in the circumstances that if



1
2 either he or his junior felt we were being unfair,
3 irrelevant or whatever, the objection would have come
4 some time before the 125th day before you, Mr.
5 Commissioner.

6 We are here because we asked for status
7 at the beginning. You clearly and carefully pointed
8 out that Phase 2 is very much affected by the
9 evidence which is entered and accepted by you in
10 Phase 1 and clearly the police have a necessary and
11 important role in assisting this commission in
12 determining how and by what means these 36 baby
13 deaths occurred in the Hospital for Sick Children.
14 This is no extension of any prosecution. I think
15 that if one carefully considered the cross-examination
16 performed by either Mr. Hunt or myself in the course
17 of these past few days, at no time has there been un-
18 fairness, at no time has there been anything other
19 than a careful examination of the facts.

20 You, Mr. Commissioner, I don't believe
21 on more than one occasion have kept us from an area
22 that you felt was improper in all of the circumstances.
23 I don't know why Mr. Sopinka feels at this particular
24 point, after 125 days, that all of a sudden that is
25 going to change and that you, sir, will then change
your role as the commissioner and the role that you



1
2 must find yourself as being a fair administrator of
3 this commission in the sense of making sure that
4 the witnesses give their evidence properly, fairly
5 and are cross-examined properly and fairly.

6 I am surprised that my friend brings
7 up the examination for discovery and the malicious
8 prosecution action that he has instituted on behalf
9 of Miss Nelles. Because he has done so, I must
10 address it. Mr. Sopinka in May and June of 1983
11 wanted to examine the two police officers for
12 discovery in the civil action. There is a letter in
13 his file sent to him by me in June of 1983 and I
14 agreed to produce the officers for discovery by him
15 but only on the understanding that Susan Nelles
16 also submit to examination for discovery before
17 either Susan Nelles or the officers gave evidence in
18 this commission. I offered him available dates in
19 July, August and September. I never heard one
20 further sound about the examination for discovery
21 until this moment in time.

22 I say to raise that as an objection
23 to our cross-examination, to use that as an extension
24 of - or to some way further our objection -- on our
25 position in a civil action is totally unsupported
by the history of the correspondence between his



1
2 office and my own.

3 Those are my submissions.

4 THE COMMISSIONER: Thank you. Before
5 I call on Mr. Lamek, is anyone else in support of
6 the position of the Attorney-General?

7 MR. TOBIAS: On behalf of my clients,
8 Mr. Commissioner, we are supporting this position
9 enumerated this morning by Mr. Hunt and Mr. Percival.

10 I would like to make two short comments
11 regarding the observations that you made. It is
12 obvious that the proceedings here should not be
13 allowed to be utilized as an examination for discovery
14 nor should they be allowed to be utilized as an
15 extension of the police investigation. However,
16 isn't the problem really that the questions are
17 extremely mixed and you cannot separate them?

18 There is an element of discovery and
19 investigation in any legitimate Phase 1 question.
20 I do not think there is any doubt about that.
21 Equally, there is an element of legitimate Phase 1
22 questioning in any questions which relate to
23 investigation and discovery. The fact is whether it
24 is a discovery in a civil action, an extension of
25 the police investigation or concerns regarding
Phase 1 in the terms of reference, any question that



E
DP/PS

1
2 that is relevant to cause of death is allowable.
3 I submit that it is almost impossible to separate
4 them into air-tight compartments and that is
5 precisely what you are being asked to do.

6 The other thing that no one has really
7 commented on and that is that I quarrel in some
8 respect with Mr. Sopinka's statement that Phase 1
9 is really just a coroner's inquest. We have urged
10 on the Court of Appeal, I think it is clear from the
11 statements made by the Attorney-General to the
12 legislature that it was contemplated by cabinet in
13 drafting the Order-in-Counsel that this commission
14 of inquiry has somewhat of a wider scope than
15 a coroner's inquest would have. In fact, the govern-
16 ment obviously considered the options available to
17 it and looked at the tool of a coroner's inquest and
18 rejected it because of the procedural limitations
19 that they recognized. So I do not think it is fair
20 to say that Phase 1 is only a proceeding which is
21 completely analagous to a coroner's inquest.

22 Clearly I support Mr. Percival's
23 point that what the interests of both the Crown and
24 the police in Phase 1 is and what the interests of
25 all the other parties is is how did the babies die.
As you pointed out before, if they died naturally then



1

2

that has some very serious consequences regarding
their behavior.

3

4

THE COMMISSIONER: Thank you. Anyone
else?

5

6

Mr. Manning?

7

8

9

10

11

12

13

14

15

16

MR. MANNING: I support Mr. Hunt's
and Mr. Percival's submissions to you, Mr. Commissioner.
I won't reiterate them. I adopt them and support
them and would add that up to the present time that it
has been our perception on behalf of our clients
that you have given a wider latitude - I am not
being critical at all, I merely observe - you have
given a wider latitude on cross-examination on behalf
of some of the other interested persons and parties
in these proceedings as opposed to the latitude given
to the parents. Again, I am not quarreling with that.
We accepted that from the outset.

17

18

19

20

21

22

23

24

25

I am fearful that if they are not
allowed to continue their cross-examination that we
might get into discussion at a later time with
respect to opening up the areas upon which I could
cross-examine on behalf of my client because I don't
agree that everyone's interests are the same and
therefore everyone looks for different things in
cross-examination.



1
2 I found it very interesting that Mr.
3 Sopinka who in talking about the examination by
4 Mr. Lamek used the word "examination" rather than
5 "cross-examination." For whatever reason Mr. Lamek
6 had, he did not go into certain areas that I would
7 like to see gone into, and I am sure will be gone
8 into by Mr. Hunt and Mr. Percival with respect to
9 certain areas where Miss Nelles said she could not
10 remember certain matters. So for that reason it is
11 my submission that you should allow them to continue
12 to play the role that they have played throughout
13 this entire commission.

14 THE COMMISSIONER: All right, thank you.
15 Mr. Shinehoft.

16 MR. SHINEHOFT: I, Mr. Commissioner,
17 support Mr. Hunt and Mr. Percival in their position
18 and certainly adopt that. Mr. Sopinka has raised
19 a question about this being an examination for
20 discovery on a malicious prosecution matter.
21 The hospital could make the same argument as far
22 as parents' counsel because there have been
23 actions instituted against the hospital, but they
24 have not done this. I think the hospital has
25 recognized that the parents have to be represented
and they have somewhat of a different interest than



1
2 the other counsel who are present.

3 THE COMMISSIONER: Thank you. Anyone
4 else? Mr. Lamek.

5 MR. LAMEK: Briefly if I may, Mr.
6 Commissioner, I find at the outset I am not entirely
7 clear whether Mr. Sopinka is asking you to review the
8 grant of standing to the Police and the Attorney-
9 General with respect to Phase 1 or whether he is
10 merely asking you to restrict their right to cross-
examine his client.

11 MR. SOPINKA: To assist my friend,
12 I am taking both positions but in the alternative.

13 THE COMMISSIONER: That is what I under-
14 stood, too.

15 MR. LAMEK: In either event, of course,
16 the position is governed by Section 5.-(1) of the
17 Act and it is worth, respectfully, looking at
it again. It provides:

18 "The Commission shall accord to any
19 person who satisfies it that he has
20 a substantial and direct interest
21 in the subject-matter of this inquiry
22 an opportunity during the inquiry to
23 give evidence and to call and examine or
24 to cross-examine witnesses personally
25



1
2 or by his counsel on evidence relevant
3 to his interest ."

4 Some ten months ago, sir, you decided that Mr.
5 Hunt's clients and Mr. Percival's clients had that
6 direct and substantial interest in the subject matter
7 of this inquiry to justify that they be given what
8 we call standing under Section 5.-(1). I confess,
9 sir, I do draw a distinction between standing
10 for the purposes of the two phases.

11 Respectfully, I adopt the position
12 which you have formulated this morning that even
13 with respect to Phase 1 the interests of the clients
14 of Mr. Hunt and Mr. Percival are indeed direct and
15 substantial. They patently have a direct and sub-
16 stantial interest in Phase 2 but although for the
17 purposes of hopefully ease of exposition we have
18 separated the two phases, there is indeed an impact
19 on Phase 2 from Phase 1. The large question in
20 Phase 2 is with respect not as my friend Mr. Sopinka
21 defines it. He says the question there is not what
22 in fact happened but what did the police know at the
23 time they took certain actions, and what did the Crown
24 know at the time it took certain actions.

25 In my submission the large question
may well be not merely what the police and the Crown



1
2 Attorney knew but what they should have known.
3 what by the exercise of proper diligence they should
4 have had available to them by way of information;
5 was the investigation adequate; did the Crown
6 Attorneys have all the information they should
7 have had, and I have no doubt that Mr. Sopinka will
8 be pursuing that line when we come to Phase 2.

9 If after this part of the investigation
10 you should have formed the view, sir, that there
11 was no proper evidence of mischief with respect
12 to any of these children I think it is idle to
13 suggest that the fight of the police and of the
14 Crown Attorney to justify their actions would be
15 more steeply uphill than had you found that at
16 least there was cogent evident of wrongdoing.
17 Therefore I say, sir, with respect, there is no
18 reason to review or rethink the grant of standing
19 which you made to Mr. Hunt's and Mr. Percival's
20 clients back in May of 1983.

21 The question then becomes, the evidence
22 of Miss Nelles, is it relevant to the interest
23 of those clients because if it is then as I
24 read Section 5.-(1) they are entitled to cross-
25 examine without restriction as it affects their
interest; and if the interest of the clients of



1
2 Mr. Hunt and Mr. Percival in Phase I be as I have
3 suggested it, sir, and as I understand you to see
4 it, then it would seem to me that any evidence from
5 people who were directly involved in the events
6 on the ward which are now being enquired into and
7 which may go to establishing cause of death are
8 indeed matters which affect the interest of
9 Mr. Hunt's clients and Mr. Percival's clients and
10 I see no basis for restricting their cross-examination
of the evidence as it goes to those interests.

11 Second, sir, I'm not prepared either
12 to be so confident as my friend Mr. Sopinka that
13 Mr. Hunt or Mr. Percival may attempt to pursue in
14 cross-examination of Susan Nelles matters which
15 lie properly outside the clients' proper interests.
16 I have no doubt that Mr. Sopinka will not be
17 shy to make at least the objections that he thinks
18 proper if such question should arise. You have
19 ruled in the past, sir, on the propriety of questions
20 raised by Mr. Hunt, Mr. Percival and others and I
21 have no doubt you will continue to do so if the
22 propriety of questions is challenged. So I suggest
23 there is no reason in principle to accede to the
24 motion of Mr. Sopinka but indeed on the basis of
25 prediction which may turn out to be unfounded



1

2

I suggest there is no reason to deal with the matter
now. It can be dealt with as individual questions
and objections may be raised.

5

THE COMMISSIONER: Thank you.

6

Mr. Sopinka?

7

MR. SOPINKA: I will be very brief.

8

I submit you have not been given any reason to find
that the Police or the Attorney General have a
substantial and direct interest in the subject
matter of this Inquiry.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25



F.1

DM.

jc

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Now Mr. Lamek says, well, in Phase II it will be relevant to determine what information they should have had. If that is all they are going to cross-examine on, to show that they should have had other information that is fine, I am quite prepared for them to ask Miss Nelles any questions as to what other information should they have had, but I submit that is not going to be the direction of their questioning.

Now really nobody has made a new point, other than the point you have made, and I have addressed my remarks to that. Your point is what happens here is relevant to Phase II. I disagree with that but I have made my submissions on that and I am not going to elaborate on it. What my friends have done is, Mr. Hunt is so desperate that he has to rely on radio interviews to support his argument. I can tell you that I could quote some beauties from his client as well, the chief law enforcement officer, that might be embarrassing but I am not going to engage in that kind of display.

With respect to Mr. Percival, he has a very short memory. The very first time he asked one of the questions from the preliminary hearing which reflected adversely on Susan Nelles I was here,



F.2

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

and you will recall that I said he was engaging in a sniping prosecution, and he has done that ever since. I can't come back every time he does it and object, because you ruled against me on that one and I don't usually repeat my submission, but that is what he has been doing all along, and I submit that is exactly what he is going to be doing now and I am going to object to it.

With respect to the Examination for Discovery, he forgets the fact that the discovery could not go ahead because the High Court lopped off the Attorney General as a party, and that is being appealed, and we can't have a discovery with one party present but later on the Attorney General may be added, so that is why the discovery did not proceed, and my friend did not read far enough in his correspondence.

THE COMMISSIONER: Yes. Thank you. Most of the time I have the luxury of reserving and writing something that is moderately literate. I haven't got that luxury today because we are to proceed immediately with the cross-examination.

This motion brought by Mr. Sopinka will be dismissed. I have stated in the course of argument that I believe that both the Attorney General



F.3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

and the Police have a legitimate interest, and that interest being an interest which will be demonstrated in Phase II, but it is an interest in the result of Phase I.

The second reason for dismissing this application is that it comes much too late. If any such application as this had been made at the beginning, it could have been dealt with then without prejudice to the parties. One of the major items of prejudice of course has been the division of Phase I and Phase II and I have no idea what position the two parties affected would have taken on the proposal of the division, they might well then have objected to it and that would have to have been dealt with. It is now impossible, we are within I hope a few weeks of entering into Phase II and we cannot change the rules of the game at this stage.

I do add, however, that I accept what Mr. Lamek has said, and of course he is stating only what the law is. That is, I am required to accord to a person who has a substantial and direct interest in the subject matter, the right to give evidence and to call and examine, or to cross-examine witnesses personally, or by their counsel, on evidence relevant to their interest.



F.4

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

(2)

17

18

19

20

21

22

23

24

25

Now as Mr. Tobias has pointed out, it is very, very difficult sometimes to tell, to make the distinction between Phase I and Phase II but I have done it, and rightfully or wrongly from time to time and I continue to do it in this phase. If any of the questions that are raised seem to be relevant only to Phase II then I will be happy to receive argument. If some of the questions raised seem to have no application to either Phase I or Phase II I will certainly receive that argument at the time. I don't encourage a multiplicity of objections but they are certainly open to counsel. So now it is time for a break and after that, after all that fuss, Mr. Hunt, I hope your cross-examination is worth it. We will take 20 minutes.

--- Short recess

--- On resuming:

SUSAN NELLES, Resumed

THE COMMISSIONER: Yes, Mr. Strathy?

MR. STRATHY: Mr. Commissioner, during all that argument I had an opportunity to review my notes and I remembered a question, and with your leave may I put it to the witness, please?

THE COMMISSIONER: Certainly.



F.5

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. STRATHY: Q. Miss Nelles, I am just referring to your notes which have now been made Exhibit 392, they are your notes pertaining to Allana Miller. If you could turn to the bottom of page 108, you are referring to the admission of Cook I believe and you say:

"The ECG was done in the room but I went with Dr. Schaffer ...".

And over on page 109:

" ... and Dr. Souliotti to Cardiology (down the hall in another section past 4B) to do the echo. The baby throughout these tests was fairly irritable .."

this is Cook:

" ... and very cyanotic, or blue. At approximately 030 I returned to 418 where I put Justin in his crib in 100 % 02 and settled him."

Now, looking at those notes, is it a fair inference from those notes that because you say that on returning to 418 that you put Justin in his crib, is it a fair inference that when you took him to the echo lab and when you brought him back from the echo lab he was in your arms rather than in his crib?



F.6

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A. Yes, it is.

MR. STRATHY: Thank you. Thank you,
Mr. Commissioner.

THE COMMISSIONER: Yes, Mr. Hunt?

MR. HUNT: I am tempted to tell you,
Mr. Commissioner, that I have no questions.

CROSS-EXAMINATION BY MR. HUNT:

Q. Miss Nelles, of the two monsters
that you have heard so much about this morning, I
am Hunt and Percival follows me. I represent as you
have heard the Attorney General, the Crown Attorneys
McGee and Wiley and some of the Coroners.

I want to say to you at the outset
although it will come as no surprise, that we have
heard from most of your colleagues on the team over
the last few weeks, with the exception of Phyllis
Trayner. I think just about every complimentary
descriptive phrase that could be applied, reasonably
applied to someone's abilities as a nurse has been
applied to you by those people. You have been
described as competent, confident, intelligent,
ability to size up a situation and act, and cheerful,
happy, and I certainly tip my hat to you to those
qualifications and credentials as a nurse that you
have. If I could get Mr. Sopinka to say half of



F.7

1

2

those things about me I would be just delighted.

3

MR. SOPINKA: If he stops now I will
say them all.

4

5

MR. HUNT: I have no further questions.

6

THE WITNESS: Thank you very much for
those remarks.

7

MR. HUNT: You are welcome.

8

Q. I would like to first ask you
about when you met Phyllis Trayner. I understand that
it was when you transferred to 5A which was some time
in the fall of 1979?

11

12

A. That's right.

13

Q. That would have been about
October?

14

15

A. Yes, it would have been.

16

17

Q. Then you told us that you worked
rarely on her team through to the time when you were
actually assigned to her team in June?

18

A. That's right.

19

Q. Can you tell me how often that
would be, once, twice, or more?

20

21

A. As I say I remember actually
orientating with Phyllis. I believe that the next
time, the other times that I worked with her would
have been, as I say, rare. I really can't say exactly

23

24

25



F.8

1

2

3

4

5

6

7

8

9

10

11

how many times I would have worked with her. She was not on the particular team that I was assigned to, but the setup on 5 was different than the setup on 4 and during the day shift two teams would work, would be assigned to work. So unlike on 4A where you would only have one team working at one time, on 5A we often had two teams working together. So the likelihood would have been more common that I would have worked with her team, but as I say I can't remember how many times. My recollection is that it wasn't that often.

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q. We have heard quite a bit of evidence from some of your colleagues about, could we call it a conflict of sorts, that existed between you and Phyllis Trayner. Without burdening you with the evidence I think I can fairly say that right from the first nurse we heard from, Nurse Browne, down through Nurse Scott, the last nurse we heard from, there was varying accounts of disagreements between the two of you, not always major, but sometimes major. To the point where I think Nurse Scott said that it was her perception that you and Mrs. Trayner disagreed most of the time about things. Now the impression that I got from the evidence that we have heard was that the disagreements to whatever extent they existed



F.9

1

2

3

4

between the two of you, went back almost if not to the point in time when you joined her team in June of 1980?

5

A. That could be so, yes.

6

7

8

9

10

11

12

Q. You mentioned the dispute that the two of you had in July over the calling of the Code 23/Code 25 for Amber Dawson, and I think that was on July the 28th. What I wondered was whether that incident was the culmination of difficulties that had existed from early June when you joined the team, or was that really the first manifestation of the problems that the two of you were having?

13

14

15

A. That was the first incident that I remember as causing me some stress or some reason to feel that we were not functioning as two team members should.

16

17

Q. This then is the first time it came out in some sort of observable way?

18

A. Some concrete fashion, yes.

19

20

21

Q. But prior to that did you have a feeling that there was sort of a boss/employee relationship as opposed to a team relationship right from pretty well the start?

22

23

24

25

A. I don't recall thinking that until, as I say, this is the one incident that I first



F.10

1

2

can actually remember.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q. But you definitely had a feeling by I guess September when this incident occurred with Baby Gage, that had crystallized in your mind that this was sort of a boss/employee situation as opposed to a real team effort?

A. Yes. I think I can clarify it. I really didn't think of her as my boss, but I thought that she was at times authoritative rather than trying to work as a team.

Q. And I think you indicated on Monday that the differences between you were never really totally resolved because of the fact that at one point the two of you had to confront each other over the situation, and there was always a tension there as a result of that?

A. I think things got better, definitely. I think that we didn't feel, or certainly I think that she tried a lot harder because she had been made aware, but I think that what I meant was that you can never actually forget that there was some disagreement between us that had to be confronted if we were going to continue.

Q. That occurred some time in the fall I think you said, around October or so?



F.11

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

A. I don't remember when the evaluation was, it was some time in the fall, yes.

Q. You gave us your account of the incident that occurred during the resuscitation efforts of Baby Hines, in March. I think in fairness I have to say that the evidence that we have heard from others with respect to that incident has sort of characterized it somewhat differently than you did. Perhaps the fairest summary was given by Nurse Coulson, who suggested that really during that time there was - this is at the resuscitation effort, that there was over this pacemaker a bickering, she used the word "bickering", between you and Phyllis with respect to the correctness of the pacemaker, to the point where Dr. Costigan had to ask "Ladies, keep it down". Then she, after it was over, spoke to both of you about there being a proper time and place for everything, and that as far as she was concerned the matter was resolved at that point when she spoke to you.

Now, does that accord with your recollection of the events?

A. I do not remember Mrs. Coulson speaking to us, no. It is my feeling that the medical people did not remember anything, and they certainly did not feel that - it is not my recollection that it



F.12

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

interfered at all with the arrest, and that is why it is my feeling that it wasn't anything but a disagreement that took place at a time when we were just simply trying to get exactly what the physician wanted.

Q. I think no one has suggested that it interfered with the resuscitation efforts, but that your recollection differs in that you don't recall Dr. Costigan asking you to keep it down?

A. Right.

Q. And you don't recall Kathy Coulson speaking to both of you afterwards about the incident?

A. But I don't believe Dr. Costigan recalled saying that either.

Q. Well, we have heard at least from Miss Coulson and I think perhaps from one other that that comment was made. Now I am not commenting on whether anybody remembers saying it, or whether you were in a position to even hear it, but your recollection is you don't recall anything like that?

A. No, I do not.

-



G/BM/ak

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q. So, if others, as may be, took from the conflict or the conversation that transpired at that time that it was something more than a discussion, then from your point of view you differ in your recollection of that incident?

A. Yes, I do.

Q. Was Phyllis Trayner really the only person of all the people that you worked with on 4A/B that you had this difficulty relating to?

A. That's a difficult question to answer because it was very important that Phyllis and I try and establish a working relationship because she was my team leader and every time that I came to work at that Hospital I had to work with Mrs. Trayner and I think for us to be effective as a team that we had to overcome any differences that we had and I think that's the reason that in October I went to Mrs. Radojewski and said I would like to have this resolved.

Q. Well, it may be that because of the position, her as a team leader and you as a team member, there was some added edge to the relationship but in terms of all the people that you had to work with on a daily basis on that ward, those two wards, was not your relationship with her



1

2

more strained than your relationship with anyone else
that you had to deal with?

3

4

5

6

7

8

9

10

11

12

13

A. As I say, I find that really
hard to answer because I had to work with her
constantly, whereas, other people, it wasn't as
important to me that I establish a working relation-
ship. Yes, it is the only relationship that I can
think of that certainly led me to confront my head
nurse about.

15

16

17

18

19

Q. All right. Well, at any point
in time during your relationship did you yourself
ever feel particularly threatened by either Phyllis
Trayner's personality or her abilities?

14

A. No, I did not.

15

16

17

18

19

Q. And did you ever perceive at
any time that she might have felt threatened by
your abilities or your personality?

20

21

22

23

24

25

A. I think that we had different
personalities and I perhaps am more outspoken than
Mrs. Trayner is.

Q. I think we have heard from
some of your colleagues about the differences in
your personalities. I think a fair summary might
be that Phyllis was a rather emotional person who
was through this period of time constantly seeking



1

2

reassurance about matters that were happening and
really except perhaps in resuscitation situations
was not what one would describe as a take charge
person in any given situation. Would you agree
with that as a summary?

6

7

A. I would certainly say that she
was a more emotional type person than I am and I
think that it is fair to say also that she did
seek reassurance.

8

9

10

11

12

13

Q. All right. Well, was she
what we would call a take charge person; this is
leaving the resuscitation attempts aside, just in
the normal routine on the ward?

14

15

A. I think she functioned as a
team leader.

16

17

18

19

Q. All right. So, my question
was, given the differences in personalities,
et cetera, did you ever perceive that she felt
threatened by either your abilities or your
personality?

20

21

A. I can't answer that, that was
not my perception, no.

22

23

Q. During that period of time,
did you and Mrs. Trayner socialize?

24

25

A. Only at ward functions.



1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q. So, other than business and business related occasions, there wasn't really a social relationship?

A. There were some showers and, as I say, ward parties and there were a couple of occasions where I went to someone else's house and she and her husband were there.

Q. Well, did you regard her as a personal friend during that period of time?

A. No, I did not.

Q. And I take it that you haven't maintained a friendship with her since you left the Hospital in March of '81 over the last two years since then, three years since then.

A. I myself have not contacted her, no.

Q. You haven't spoken to her at all in the intervening time?

A. I spoke with her at the preliminary hearing.

Q. But I mean other than times when you were at the Court during your preliminary hearing, you didn't have an occasion to be speaking to her?

A. Not speaking to her, no.



1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q. Now, I would like to go back and review for a moment the deaths that occurred beginning on June 30th of 1980. It may be of assistance to you, I don't know if you have it, it is Exhibit 383, which is the summary prepared by Commission Counsel.

Just so I have it, going into this period June 30th on, your experience with death on cardiology wards was one successful resuscitation while you were working on 5A?

A. I believe it was successful, yes.

Q. All right.

And during the month of June when you were on 4A working with the Trayner team there were two children who died?

A. I don't recall exactly.

Q. All right. I thought you had indicated there were two deaths during June and that insofar as Baby Woodcock was concerned at the end you had really no recollection as to whether you were involved with the resuscitation efforts or not?

A. I believe that Mr. Lamek said to me that there were two deaths on the cardiology



1

2

floor that month but I didn't recall them or I didn't
remember being involved in them.

4

5

6

7

8

9

Q. All right. So, going into
July then, aside from the experience you had with
what you believe was a successful resuscitation
effort, it may not have been, when you were on 5A,
you really had no experience with deaths of people
that you were involved in the care on cardiology?

10

A. No.

11

12

Q. Now then the first patient
I take it that you had that arrested and died was
Baby Bilodeau on July 22nd.

13

A. That's right.

14

15

16

17

18

Q. And your recollection with
respect to that was very vague. You recalled I
think that he was in an Isolette in Room 418 but
you had no recollection of the events leading up
to that and no independent recollection of what
occurred at the time.

19

20

21

22

Now, Baby Bilodeau being the first
child that you were actually caring for that died on
the ward during the time when you were charged with
the responsibility of looking after him, I would
think must have been a traumatic event?

23

24

A. Yes, it was.

25



1

2

Q. And distressed you?

3

4

A. Yes, because it was my first child that had died.

5

6

7

8

9

Q. Okay. And at least inasmuch as the baby wasn't on constant nursing care that night, whatever its condition was in terms of risk, that particular shift, death wasn't felt to be so imminent that the baby required that specialized care?

10

11

A. He did not require constant care, no.

12

13

14

Q. So, this would add I suggest to the distress that you would feel on the first baby that you had care of that died?

15

16

A. I cannot say that I did not have, was not surprised by his death though.

17

18

19

20

Q. All right. But I guess my question is, I'm sure you must have thought a lot about this death, it being the first one that you had encountered of a patient that you were responsible for?

21

22

A. I thought of it in terms of the actual Code 25 and whatnot, yes.

23

24

25

Q. That's what I mean. I'm not suggesting dwelling on it morbidly but as a competent



1
2 nurse faced with the first traumatic incident of
3 this type it is the sort of thing that I suggest
4 you would replay in your mind looking for signs
5 or symptoms that led up to the arrest and checking,
6 really checking what you did to make sure that you
7 had done everything that you could in terms of
8 the care you were giving to the baby.

9 A. Yes.

10 Q. You look like you had something
11 more to say?

12 A. Well, I think you are asking
13 me that it was my first arrest and that it should
14 stick out clearly in my mind.

15 Q. You were anticipating me but
16 I was going to suggest that an event of that impact
17 is something that one normally wouldn't quickly
18 forget.

19 A. And I didn't forget the
20 condition of the child and what his diagnosis was
21 and medical factors about him, I did not forget
22 those kinds of things, but I then quickly was faced
23 with more arrests and my memory is that it all sort
24 of feeds into one and I have pictures of various
25 things in my mind but I cannot clearly define what
happened at what day and that kind of thing.



1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q. All right. Well, I think Baby Taylor died within a few days on the 27th, according to our exhibit here, and then on the 28th, which was only six days later, Baby Dawson died, and this was another baby that was under your care on the particular shift when the baby arrested and died.

Now, I guess you have recollection with respect to the problem over calling the Code 23 and the Code 25 with respect to this baby, but again, insofar as the events leading up to it and the arrest itself you don't have any independent recollection and again I guess my question is the same as the last baby we dealt with, that this being the first time you are confronted with this situation and it having some particular impact on you because of that, would you not again be replaying that evening in your mind with a view to looking to see if the care you gave was adequate and proper and looking for some clue or sign as to what went wrong.

A. I had no reason to do that really. I mean, we have passed over a lot of water since then and I think that the morbidity rounds where these children were actually discussed



1
2 and where the physicians themselves were looking,
3 as well as all of the staff involved with the
4 children, at the actual condition of the child
5 and that they had no reason to question the care
6 or whatever lead me to believe that these were
7 sick children and unfortunately they reached the
8 result that they did.

9 Q. All right. My friend just
10 views whether I do that with all of the prosecutions
11 I lose and I do and that's why I'm asking these
12 questions, I can still remember them.

13 MR. SOPINKA: But nobody assures
14 you you did a good job.

15 MR. HUNT: Q. Now, within a couple
16 of nights of July 28th Baby Hoos died. This is on
17 the 31st, this would be now another baby that you
18 had direct responsibility for and this would be
19 the third child that you were charged with that had
20 died since July 22nd. So obviously a very trouble-
21 some and distressing event for you that night. It
22 wasn't over because on the very next night Baby
23 Turner died, the fourth child that you had
24 responsibility for and again I just note that with
25 respect to both those babies that you don't have
a recollection, independent recollection of what



1

2

occurred on the nights?

3

A. Right.

4

Q. Even though I think I take

5

from your answer that you were concerned in

6

replaying these events in your mind to see that

7

everything you did was up to scratch.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25



H/DP/ak

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

A. I think that my recollection of that period, I think of it as a period of time that there was no doubt that the period of July and August caused me a lot of distress in the sense that I knew that we had lost a number of children and we had gone through a very bad time. That is how I remember it.

Q. By the 1st of August, I think Mr. Lamek pointed out, in the six nights that you had worked between the 22nd and the 1st, four children under your care, one of whom, Hoos, was under constant nursing care, had arrested and died and after about a two and one half week respite Baby Monteith then arrested on the 19th of August to bring to a total in less than a month, that is from the 22nd of July through to the 19th of August, five children that you had under your care, one of whom was under constant nursing care, had died.

A. Right.

Q. And this period I am suggesting was one where you were for the first time being faced with the fact of death on a cardiology ward, children that you were responsible for.

Now, I guess why I am asking these questions is to lead up to the question I really



1
2
3 want an answer to and that is in all of the evidence
4 that we have heard about these events that occurred
5 in July and August, we heard about the fact that
6 you and Phyllis Trayner spoke to Nurse Costello
7 back at the end of July about the death of Baby
8 Dawson when that baby died, questioning whether
9 you had done everything correctly, but what I did
10 not hear in the evidence is any cry from you to
11 somebody saying "Look, I know that what I am doing
12 is right. I have had five children under my care
13 die in under a month and I know what I did is right.
14 Something is going on. Somebody had better get to
15 the bottom of it." I don't mean to be discourteous
16 but I think the evidence has shown that you are not
17 a shrinking violet when it comes to expressing your
18 opinion and views and given that that occurred and
19 happened to you within that one month period my
20 question is why at that time were you not screaming
21 at somebody to get in there and find out what was
22 going on.

23 A. Other than that I was a nurse
24 on the floor, that the physicians themselves were not
25 saying that these were unexpected deaths, they seemed
to take the view that they were very sick children
and my experience in looking after them was that they



1
2 were very sick children. Yes, we were seeming to
3 go through a very bad period and that was the only
4 thing that I attributed it to, was that unfortunately
5 we had a rash of children that were ill and for
6 reasons that seem to be satisfyiny the physician
7 in that there was never any question or I certainly
8 never heard anything that the nursing care or whatever
9 was being questioned at that time. So I just, as
10 I have explained, felt that we were having a bad
11 time.

11 Q. By that time, the mid-part
12 of August and certainly by the end of August,
13 people with more experience than yourself in
14 cardiology and on 4A and 4B were voicing the
15 opinion that what was happening was of concern. It
16 was unusual and something that that they had not
17 encountered before.

17 A. I don't recall hearing that
18 it was unusual.

19 Q. Unusual to have that many
20 deaths in that period of time.

21 A. As I said to Mr. Lamek, I
22 had myself not cared for or had not had experience
23 with small infants with such severe cardial vascular
24 problems and I had no way of knowing as a nurse, I
25



1
2 had no reason to question that there was anything
3 except that they were sick and that they happened
4 to expire when I was looking after them.

5 Q. We have seen in respect to
6 some of those children that there was a question
7 about why they died that was still being discussed
8 in September, even at the morbidity and mortality
9 conference in early September.

10 A. I did not see it as a question
11 of why they had died. I saw that conference as a
12 means of helping the nursing staff and physicians
13 to have a chance to talk about those deaths because
14 as nurses I had never heard the results of autopsy
15 reports. That conference was the first time that
16 I ever heard what the results of the Bilodeau,
17 Taylor and I forget who else was involved in that
18 particular morbidity conference but --

19 Q. Baby Turner.

20 A. Turner, that that was certainly
21 the first time that I had heard any results of the
22 autopsy reports.

23 Q. I think you said that you
24 took some comfort from the discussions of those
25 deaths at the morbidity/mortality conference in
early September.



1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

A. Because we talked about all of the care that the child had received from either stays in the Intensive Care or care on the floor, but as regards to the physicians we were looking at the child as a whole and the care that he had received from the first day he arrived until the day he died, in this case.

Q. Did you go to the second conference that took place at the end of September?

A. No, I did not.

Q. I guess I am puzzled by some evidence that was given by Nurse Frise who did not take the comfort that you took from the explanations that were being given in those early days for the deaths. To put it completely, and I am looking at Volume 109, and it is page 4715 and 4716, she was asked by Mr. Lamek:

"Q. We have heard evidence some many months ago now as to what was said at those meetings."

That is referring to the ones in September.

"Do I fairly characterize it as the physicians looking at certain deaths and saying, look, these children were terribly ill. There is nothing



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

"you did wrong. There is nothing you could have done to change the course of events. Was that the thrust that you remember?

A. Yes.

Q. Were you reassured by those meetings?

A. No, I was not.

Q. Can you tell me why not? What troubled you, notwithstanding those meetings or the meeting that you attended?

A. In that some of the children that did die, at the mortality rounds they would explain the heart defect and they would say why the child had died because of certain heart defect, but I knew that some of the children weren't that sick and the particular defect they had, shouldn't have died as soon as they did.

Q. Okay. Well, whether you were right or whether you were wrong I take it that you were still not persuaded by the reassurance that you



1

2

"had been given at the mortality
conference that you attended?

3

4

A. That is correct.

5

6

Q. At the meeting of October 22nd,
did it appear to you that other nurses
similarly were not satisfied by the
reassurances they received?

7

8

9

A. That is correct."

10

11

12

13

14

With respect to Nurse Frise, she
would seem to indicate that the answers that were
being given in September, she was not accepting,
and she was not the person who was being most
affected by the deaths that had occurred in July
and August.

15

16

17

18

MR. SOPINKA: In the review of
the evidence which my friend has done fairly, I
think it should also be pointed out that the chart
shows that she was not present during any of those
deaths. That may be of some significance.

19

20

21

22

23

24

25

MR. HUNT: Q. I accept what my
friend has said, and can you assist me as to why
when apparently she and other nurses by October
were not accepting what were being said about deaths
that were a puzzlement on the ward, why you were
taking such reassurance from what the doctors were



1
2
3 saying?

4 A. I don't know whether I was
5 really taking reassurance as much as I accepted
6 what they said. As Meredith describes in her
7 statement, they talked about the medical condition
8 and whatnot to quite an extent. In other words,
9 the physicians themselves talked all kinds of
10 data about various pressure values in the heart
11 and whatnot which I as an RN did not understand a
12 lot of it and I would like to think that Meredith
13 as an RNA would not have understood some of it.
14 They seemed to think that the care that was given
15 was appropriate and that the only recommendation
16 that came out of that meeting was that perhaps the
17 children needed more intensive type of watching.
18 In other words, that they were children that
19 warranted extra attention and that was where we
20 first heard discussion about an intermediary
21 Intensive Care Unit.

22 Q. I guess what I am getting
23 at here, I am looking for some indication of alarm,
24 of outcry on your part during this early period
25 where in fairness by the middle of August when Baby
Monteith died, Baby Monteith was the seventh baby
to die since Laura Woodcock died on June the 30th,



1
2 this was really, if I can put it this way, a Susan
3 Nelles problem inasmuch as and maybe more so than
4 a Trayner team problem. You had five of those
5 children under your care that had died in that
6 period of time. Granted they were all in the
7 presence of the one team but in terms of whom they
8 affected and impacted on it had to be you more
9 than the others because of the care that you were
10 charged with giving them at the time of their death.
11 I guess what I am asking you is was there alarm,
12 was there on your part an outcry for somebody to
13 get in there and find out what was happening?

13 A. No, there was not. I think
14 in fairness as well that the morbidity and mortality
15 conferences were held and that in fact we were
16 reviewing what had taken place, to some extent.

16 Q. I only point out what the
17 others have said to show you that some people were
18 not buying what was being said.

19 A. Right.

20 Q. At that point in time, but
21 you were?

22 A. I felt satisfied in the
23 answers that were given, yes.

24 Q. The next baby that you were
25



1
2 on duty for that died was Baby Gage on September 25
3 and we have heard your recollection of that and again
4 you have no independent recollection but the point
5 I think that was made by Mr. Lamek was that was the
6 first time that you were the team leader for that
7 team. I want to make sure I have it right. Was
8 that the first night that you were the team leader
9 or had you been team leader other nights when
10 children did not die, or was that the very first
11 night that you were a team leader?

12 A. No, I don't believe it was
13 the first night because I had been team leader for
14 the month of September.

15 Q. That was the first time
16 when you were the team leader that a baby had died
17 while you were the team leader?

18 A. I don't know.
19
20
21
22
23
24
25



I
DP/cr

DM/cr

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q. I think the only other one while you were on after your holidays was Laurette Heyworth on September the 2nd. I don't believe you were a team leader on that night, do you have any recollection of that?

A. I was certainly on duty that morning. I believe I was team leading that day but I don't remember exactly.

Q. Well the death occurred at 8:30 in the morning, and you were on long days and had come on at 8 o'clock?

A. Right.

Q. Or 7:30.

A. Well perhaps we can look it up and see if I was team leading that day.

Q. I think that perhaps my friend may have cleared it up, and see if this sounds right. Perhaps that baby was the first arrest call and death when you were a team leader.

A. The first child?

Q. Yes.

A. But I believe she was a "No Code.

Q. I think Heyworth was a "No Code", but I was talking about Gage, I am sorry, that was



1

2

the first arrest call and death while you were a
team leader?

3

4

A. The first arrest call, I
will take your word for it.

5

6

Q. Well I am taking Mr. Lamek's,
so if it comes back we will --

7

MR. LAMEK: Don't do that.

8

9

10

11

12

13

14

Q. Then through the period October
to February there were-11 of the deaths that are
characterized as suspicious on this chart occurred,
and you were on for six of those, and on my reading
of the chart four of the six that you were on four
of the children were under your direct care, that
is McKeil, Lutes, Gosselin and Fazio, that takes
us through to the end of September.

15

A. The end of ...?

16

17

18

19

Q. I am sorry, the end of February.
I am sorry, with respect to those you have indicated
again that you have little recollection. During
this period of time I think you have indicated that
you didn't --

20

21

A. I am sorry, did you say five
or six?

22

23

24

25

Q. I said six.

A. I only see five; one, two, three,



1
2 four, five and of those that were actually assigned
3 to me one, two, three, four.

4 Q. All right, I stand corrected.
5 Four out of five that died during that period were
6 children under your care, McKeil, Lutes, Gosselin
7 and Fazio.

8 Now you have indicated that during
9 this period of time you didn't discern any pattern
10 developing in the deaths?

11 A. No, I did not.

12 Q. And I think the one comment that
13 you made that surprised me was that you didn't
14 discern at that point in time that these children
15 were all dying at night?

16 A. I don't remember making
17 that observation, no.

18 Q. Well, why I am puzzled is
19 just about everybody else that has testified has
20 indicated that by some points in July, August, the
21 end of September, they had begun to discern a
22 pattern that the children were dying in the
23 early morning hours in the presence of the same
24 team, and it would seem that you are the only one
25 who as a regular member of that team, it hadn't
dawned on you until March that the children were



1
2 all dying during the same period of time and at night.

3 MR. ROLAND: Mr. Commissioner, we are
4 all about to stand up. Mr. Hunt is really over-
5 stating it when he says everybody realized that by
6 July, August, September. As I recall the evidence
7 the nurse witnesses that really recognized it I think
8 were the night supervisors, they were the earliest
9 ones and of course they work only at night. It
10 seems to me that the other nurses certainly they
11 all did not recognize it at that stage, and some of
12 them didn't recognize it until quite a bit later in
13 1981. If Mr. Hunt can show us --

14 MR. HUNT: Yes, I can take you right
15 to the pages, and I will do that.

16 THE COMMISSIONER: Ms. Cronk wants to
17 contribute.

18 MS. CRONK: I hate to get into the
19 fray, but just to assist my friend as he takes you
20 to the pages, two of the members of those teams,
21 Janet Brownless and Mary Anne Christie placed their
22 first conscious observation of that fact later in
23 the fall.

24 MR. HUNT: First of all to assist
25 everyone I said regular members of the team, Janet
Brownless I don't think was a regular member of the



5 2 team.

3 MS. CRONK: Mrs. Christie was.

4 MR. HUNT: And I will deal with Mrs.
5 Christie then. Let's deal first with Nurse Browne.
6 Her recollection...

7 THE WITNESS: Pardon me, but who is
8 Nurse Browne?

9 Q. Well it is Carol Browne, Carol
10 Putherbough.

11 A. Okay, she wasn't Browne then.

12 Q. All right, I am sorry, we only
13 know her as Browne.

14 A. Okay.

15 Q. Volume 84, page 8236-8237,
16 by August Nurse Brown was aware the deaths were
17 occurring at night in front of a single team.

18 Nurse Costello, Volume 93, page 1041-
19 1043, became aware of the increased deaths in July
20 and observed they were early at night or in the early
21 morning hours in front of a single team. The thought
22 that it was restricted to a single team was crystalized
23 in August or September.

24 Bertha Bell, we will leave her for a
25 minute and deal with Lynn Johnstone.

Lynn Johnstone, Volume 103, page



1
2 3472-3476; when she returned from her holidays in
3 July she was told about the increased number of
4 deaths in the presence of a particular team.

5 Nurse Coulson; Volume 106, page
6 4126-4129. By early winter, September, October,
7 November, December she noticed the timing of the
8 deaths was within a narrow time band, appeared a
9 vast coincidence to her. By December she considered
10 it was not coincidence. Thought it had been bad
11 luck, but by December she no longer felt that and
12 she considered something was wrong with the IV or
the care.

13 Nurse Radojewski; Volume 111, page
14 5053-5055. By the end of July, early August, aware
15 of the deaths observed on the long night team,
16 observed there was a pattern to the deaths - observed
17 no pattern to the deaths but may have been aware
18 of specific time frame the deaths were occurring
19 in front of the same team. Volume 11, page 5010
20 in early September aware of deaths on the same shift
early night time frame.

21 Then Nurse Bell I had a note for her
22 which I can't find at the moment, and I will rest
23 with the recitation of the evidence, and suggest that
24 if my friends don't like the choice of words I used
25



1
2 before, that the bulk of the evidence we have heard
3 suggests that people were becoming aware from any
4 point in July through to the late fall, of the fact
5 that there was an increased number of deaths, that
6 they were occurring at night, in a particular time
7 frame at night, in the presence of the same team.
8 That your suggestion that it was March when you
9 first realized these deaths were occurring at night
10 is difficult for me to understand given the experience
11 of the bulk of the members of the team that you
12 worked with during that period.

12 A. It is my feeling that we are
13 dealing very much in hindsight at this point in time,
14 and it is difficult for me to recall exactly when the
15 feelings arose in terms of what my thought process
16 was three, three and a half years ago. It seems
17 to me that I did not really bring that kind of, sort
18 of grouping of the deaths as being at a certain time
19 frame, or being with our team particularly, until
20 March. I guess maybe I am not as astute as my
21 colleagues.

22 Q. What you are saying is you
23 didn't appreciate the fact that these deaths were
24 occurring by and large at night, in the early morning
25 hours, until some time in March?



1

2

A. I do not remember making that
link, no.

3

4

Q. Well we have heard from some
witnesses that there were certain hours in the
early morning when they began to watch the clock
and get apprehensive about another baby arresting.
And if they got past a certain point in time they
breathed a sigh of relief, because the baby did not
arrest that night. Did you ever experience that
feeling?

5

6

7

8

9

10

11

A. I remember people making
comments about that, and it was like a joke.

12

13

Q. It was like a joke?

14

A. In terms of, gee it's 5 o'clock
and all's quiet.

15

16

Q. In other words, it's a surprise,
we have made it through the period?

17

A. That's right.

18

19

Q. Did you ever hear anybody
referring to certain hours in the early morning as
the "witching hours"?

20

21

A. I don't recall that, no.

22

23

Q. In any event when you became
aware of the clock watching, if I can call it that,
that would have been some time in March?

24

25



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A. Right.

Q. Now then we have the second major period of deaths, I think you even referred to the fact that there were two times that they concerned you, one was July/August and the other one was March?

A. Right.

Q. When we had this horrible spate of deaths between March 7th and the 22nd, nine in all, and you were on duty for eight of them, and three of those were under your direct care as I read the chart, that being Pacsai, Miller and Cook?

A. Right.

Q. And with respect to Baby Cook, as we have heard, you were on constant nursing care on the night that he died?

A. Right.

Q. Now again I suggest to you that in March, as in July and August, you were really in a different position than the other nurses on the team, inasmuch as the main impact of the events of those nine deaths, there was more impact on you than there was on anyone else inasmuch as you had three of these children that was under your care, and one of them on constant nursing care which is



1
2 more than anyone else during that month, on my
3 reading, babies under your direct care. So I am
4 suggesting to you that again you stood in a different
5 position in terms of the impact of the events of
6 those days?

7 A. I don't remember feeling that
8 way, not at all.

9 Q. Well again in March with you
10 in this position of looking after these children,
11 three in number that died over this period of days
12 from the 7th to the 22nd, I think you have indicated
13 it was very distressing to you?

14 A. Yes, it was.

15 Q. And again I look to the
16 evidence for some cry for you, or request for some-
17 body to get in there and find out what was going on?

18 A. I think I did.

19 Q. When was that?

20 A. I think, I am not sure if this
21 gets into Phase II again, but I think at that meeting
22 on Monday night that my cry was, I am glad there
23 is an investigation going on.
24
25

- - - -



BmB.
jc 1
J.1 2

Q All right, that's on Monday
3 night, the 23rd, at Liz Radojewski's house?

A Right.
4

Q Right. And I intended to deal
5 with that. But as things were developing during the
6 course of that month, as I understand it, you were
7 the team leader on the night that Baby Warner died on
8 March the 7th and team leader again on the night that
9 Baby Gionas died March 9th and then you were charged
10 with the responsibility of looking after Pacsai,
11 Miller and Cook?

A Was I the team leader when
12 Warner died? I don't have that on mine.

Q That's the note that I have
14 from your examination in chief and on this chart if
15 you look over in the Comments section beside Warner
16 I think you will see that you were the team leader on
17 4A?

A I'm sorry, I was looking at the
18 symbols.

Q All right. So, my point is though
20 again that from the point in time when the deaths
21 started on March 7th you were affected by them?

A As was everyone else.
22

Q I don't dispute everyone was but
23
24
25



J.2

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

(2)

16

17

18

19

20

21

22

23

24

25

I'm suggesting that you were more so by virtue of the fact that you were either the team leader or you were charged with the specific care of the child when it died during that period. I have looked for some outcry from you during that period for somebody to find out what was going on and you indicate as of the night of the 23rd you were looking for something by way of an investigation to find out what was happening. But prior to that time no?

A. No, and I think that it is very hard to explain to you that we had no reason to believe that there was anything, any reason to question it. I mean, I am a nurse in a medical facility and as a nurse it's a fact of life that babies are sick and it is also a fact of life that sometimes they die.

Q. But you say we had no reason to believe that there was anything amiss. I suggest that wasn't universal amongst the colleagues that you worked with because we have heard from Nurse Coulson that by December she had in her own mind ruled out coincidence and was looking for something else being wrong either in terms of the IV or the care?

A. But she is a nursing supervisor who does not work on my floor. So, I would not have a lot of contact with her.



J.3

1

2

3

Q. I am not suggesting that she expressed these views to you.

4

A. Right.

5

6

7

8

9

Q. I am not suggesting that. I am just saying that the feeling that you express as to "we", meaning the group, having no reason to believe there was anything amiss was not something that by that point in time was universally shared by the people connected with Ward 4A and 4B.

10

11

12

13

Well, all right, in any event as of the night of the 23rd at Liz Radojewski's you were making a special cry for someone to find out what was going on, and we will deal with that later.

14

15

A. Not a special cry but my wording as I remember it was that I was glad that an investigation was taking place.

16

17

Q. That wasn't an investigation that you asked for or that you asked anybody to undertake?

18

A. No.

19

20

Q. This is one that events caused to commence and began..

21

22

23

24

25

All right. Well, let's leave that and go to the question of the team leader situation. I think you indicated that you had ambitions to become a team leader and in fact you were told that you



J.4

1

2

3

4

would be considered for a position when the next opening came up, and this was some time in the fall of '80?

5

A. Right.

6

Q. And that was by Liz Radojewski?

7

A. Yes, she actually wrote it on my evaluation.

8

9

Q. All right. Now, you felt I take it that you were capable of being a team leader?

10

11

A. I felt that I should be considered, yes.

12

13

Q. All right. Did you feel that you were capable of being a team leader?

14

A. I think so, yes.

15

16

Q. And you felt that certainly back in the fall when the question was first raised with Liz Radojewski?

17

18

A. That was what came out of my evaluation.

19

20

Q. Did you feel that you were as capable as anyone else who was in the role of team leader at that point to fulfil those duties?

21

22

23

24

25

A. I felt that in terms of what my head nurse was saying to me, in terms of evaluation of my performance on the floor that she felt that I was



J.5

1

2

ready and I felt that also I was ready to at least attempt to fulfil that role, yes.

3

4

Q. All right. Did you feel that you were as capable as Phyllis Trayner to be the team leader?

5

6

7

8

9

10

11

12

13

14

A. I don't recall comparing myself to other people in that sense of the word. I recall thinking that in terms of what had been told to me that I had reached the stage that I had been on the floor long enough and I had gained enough experience and I had enough background that, yes, now I could be considered to at least think about fulfilling that role, but I didn't compare it, didn't think of myself as capable as anyone else.

15

16

17

18

19

20

21

Q. Now, it has been suggested by at least two of your colleagues, and that is Nurses Costello and Bell that in their perception, part of the tension that existed between you and Phyllis Trayner had to do with personalities and that in part might have been responsible or in part might have been grounded in the fact that you felt you were as capable of being a team leader as Phyllis was?

22

23

24

25

A. I felt that I was as capable an R.N. as Phyllis Trayner was. It had no relation to team leading.



J.6

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q. But you felt you were capable of being a team leader as well?

A. According to that evaluation, yes.

Q. And do you agree or feel that that view that you had of your own capabilities and perhaps the way you expressed it may have been part of the source of whatever tension existed between you and Phyllis Trayner?

A. I don't believe so, no.

Q. Now, you indicated that you were upset, hurt in March or early March when you found out that Joan MacIntosh was going to be made the team leader when the vacancy had come up?

A. Right.

Q. And I think you said you weren't really angered by that so much as hurt that Liz Radojewski hadn't told you about it?

A. That's right.

Q. But were you not a little bit angry as well that you had been passed over?

A. I was annoyed that she had made that kind of move without telling me or explaining to me her reasoning behind, just selecting Joan MacIntosh for the position.

Q. It wasn't just because she hadn't



J.7

1

2

3

4

5

observed the formality or the nicety of calling you
aside in advance and telling you she had given it to
someone else but there was an element of upset because
you didn't get the position?

6

7

8

9

10

11

12

13

A. My feeling was that in October
or November on my evaluation that it clearly stated
that I would take the team leader course or be
considered for the next team leader position and here
it was, it had occurred and Liz had not approached me
to tell me and I was annoyed that as a head nurse,
having written and conveyed to me this expression
that she had not carried through on what she said she
was going to do.

14

15

16

17

18

19

Q. Which was consider you for the
position?

20

21

22

23

24

25

A. That's right.

Q. The next one available?

A. Right.

Q. And in addition to that, she
hadn't told you herself?

A. Why, right.

Q. Right. Well, in her notes that
she made herself, and they are in the exhibits, it is
the preliminary hearing Exhibit 32A, Tab 17. Do you
have a set of notes there? It is on the second page



J.8

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

the one I am going to refer to. Do you see about three-quarters of the way down the page she's got under the heading of events between, it looks like November 2nd and April 12th of '81:

"Fitzgerald, Team Leader, Arbour last day March 20th, '81, MacIntosh (arrow) moved up to team leader on her team."

And then a question mark.

"Nelles devastated re Joan's promotion (passed on by the grapevine no direct verbalization from Sue)."

Now, I think you have indicated you didn't have any direct verbalization with her about the incident?

A. As I explained that I was on nights first of all. Actually, first of all - pardon me, I believe that I worked the nights some time in the middle of March. I went away for a week's time and when I came back I was again on nights and as it turned out that Sunday or that Saturday was my last night of work and I had not had the opportunity to approach Liz about this incident because I had been on nights (1) and (2) because I had been away.

Q. Now, it would appear from her



J.9

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

notes that somehow she got the impression, not from talking to you but from the famous grapevine, that you were devastated by Joan MacIntosh's promotion.

Now, I say to you, firstly, did you say anything to anybody that you can recall that would have given them the impression that you were more than just upset by the fact that you hadn't been spoken to by Liz Radojewski first and that she hadn't considered you for the position?

A. Well, first of all, with respect, I think that you and I both know what a grapevine is like.

Q. Sometimes the grapes die there.

A. That's right, and things can be greatly exaggerated. My feeling is that I talked to Bertha and I talked to Phyllis and I explained what the situation was and I think that they agreed with me that they too felt that the proper ways of handling this were not done and I think that I can only speculate that perhaps that got exaggerated.

Q. All right. So, you did speak though to Bertha Bell and Phyllis Trayner about your concern and upset over the way the situation was handled?

A. That's right.



J.10

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q. But I take it you wouldn't describe your reaction as one of devastation in not having got this position?

A. Not devastation, no.

Q. Did you ever wonder at that point in time whether the fact that you didn't get it or that the promise wasn't carried through had anything to do with all of the deaths that had been occurring with respect to your particular team?

A. No, not at all. In fact, I knew the reason why Joan was probably promoted to the position of team leader. It was just the fact that Liz had not told me herself why she had done what she had done that upset me.

MR. HUNT: All right. Would this be a convenient time, Mr. Commissioner?

THE COMMISSIONER: Yes, all right, until a quarter past two.

--- Luncheon recess.

-



Nelles, cr.ex.
(Hunt)

AA
DP/cr

1

2

---On resuming.

3

THE COMMISSIONER: Yes, Mr. Hunt.

4

5

6

7

MR. HUNT: Sir, if I could just give you two more references. You will recall I was reciting them earlier and I left out two. I have now found them.

8

9

THE COMMISSIONER: Oh, yes.

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. HUNT: You will have to go back away. It was in connection with the patterns.

THE COMMISSIONER: Yes.

MR. HUNT: And Mrs. Scott's evidence was the reference that I was thinking of. It is Volume 118, pages 6791 and 6792. Mrs. Christie was Volume 122, page 7782 to 7785.

THE COMMISSIONER: Thank you.

MR. HUNT: Q. Now, Miss Nelles, if I could just go back, before we pick up, to one area. I was asking you about Phyllis Trayner and whether you had contact with her after the preliminary hearing. I think you said that you had never initiated any contact with her since the preliminary hearing. Had she initiated or attempted to initiate contact with you at all since then?

A. She wrote me a note.

Q. Okay, because that was my next



1
2 question. You said there had been no verbal
3 communication and it struck me that maybe there had
4 been written communication.

5 A. She wrote me a note when my
6 father died.

7 Q. Other than that, was there
8 anything else?

9 A. No, there was not.

10 Q. All right. You indicated to
11 my friend Mr. Lamek on Monday that as part of the
12 resolution of the difficulties you were having with
13 Phyllis you said to Liz Radojewski in October some-
14 thing to the effect "I think we can work the problem
15 out but if we can't then I should go on to another
16 team as opposed to continuing to work with Phyllis."

17 Is that a sort of accurate summary of
18 the resolution that you had proposed?

19 A. I think that I may have said
20 there may be a necessity for us to consider that I
21 move to another team and Mrs. Radojewski felt that
22 we could work it out and that we should try and work
23 it out.

24 Q. You were prepared to move to
25 another team if the problem could not be resolved at
that point?



1

2

A. Right.

3

4

5

Q. You also indicated though that you were not aware of any other discussions about splitting teams up in response to the stress created by the deaths in July and August?

6

A. I never heard that, no.

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q. Let me just indicate to you that again we have heard considerable evidence about that fact that it was discussed some time in the fall, probably in October, about the teams being split up and I will just indicate, firstly in Exhibit 301 which is the Ward 4B meeting book, that is a separate little document stapled together, Miss Nelles, and I don't know if you have it, but at page 8, it may be difficult for you to read but under the date of October 23, 1980 there was apparently a meeting at which a number of people listed there were present: Karen, Shirley Anne, Meredith, Mary, Dianne, Mary Clooney, Gloria, Jane, Phyllis, and another name I can't make out, and the first thing is that Karen Power started by saying that we need support and that we don't need our team to break up.

I appreciate that you are not listed as being there but that is about the time when the evidence suggests that there was a discussion or



1
2 more than one discussion about splitting up the teams
3 in response to this stress. We have heard of the
4 conversations from among others, nurses Browne or
5 Putherbough, Costello, Bell, Johnstone, Frise and
6 the only other person that indicated that she did
7 not recall any discussions about that particular
8 topic, although there may have been, was Liz
Radoljewski.

9 So in light of the extent to which
10 we have heard about it, having been discussed as
11 a response to the stress that was created in July
12 and August and to some extent September, do you find
it puzzling that you did not hear about it?

13 A. No, I don't.

14 Q. We have also heard that it is
15 a fairly unusual situation to break up teams as a
16 result of something that was happening on the ward.
17 In light of that, don't you think that it is strange
18 that you were not involved in the discussion?

19 A. I never really thought about
20 it and as I say I don't remember ever hearing that
discussion before.

21 Q. With respect to that, there
22 isn't any reason that you can think of why the other
23 people would not have included you and/or Liz
24
25



1

2

Radojewski in those discussions is there?

3

A. Not that I can think of.

4

The only observation I can make is that none of those people appeared on my team.

5

6

Q. Well Phyllis' name was down there.

7

8

A. At the meeting, but we have not heard whether she --

9

10

11

Q. In any event, do you think at that time there was any - or were you able to assess whether you were feeling the stress of these incidents as acutely as the others?

12

13

A. I certainly was feeling under stress, yes.

14

15

16

17

18

Q. Were you able to gauge it in respect to the others? Were they perhaps feeling more distressed over this than you were at that time, that they would be talking about splitting up the teams, and not including you in it?

19

20

A. I don't recall hearing that discussion so I can't answer that question.

21

22

23

24

25

Q. But my question was in terms of the feelings of stress that you were having at the time as compared to the others, did you feel that you were reacting as the others were, under as



1

2

much stress from the situation as they were or did
you feel the others were reacting in a more
distressed way?

3

4

A. No, I don't. We all were under
stress.

5

6

7

Q. There is no reason in terms
of the stress levels people were working under that
you would have been excluded for any deliberate
reason from that kind of a discussion?

8

9

A. Not that I know of, no.

10

11

Q. We have heard from a number
of your colleagues as well that as early as August
and certainly by October there were discussions
about psychiatric counselling for nurses as again
a method of responding to this stress. Were you
involved in any discussions about the possibility
of that occurring, along with other nurses?

12

13

14

15

16

A. I don't really recall any
discussions about that until later.

17

18

Q. How much later?

19

A. I am not sure. Again I believe
it was into the new year, February or March. I
really don't remember.

20

21

22

Q. We have heard from Miss
Costello that the matter was raised a number of times

23

24

25



1
2 by nurses first in August and then at a meeting in
3 October and Miss Johnstone has said that the issue
4 was raised first by Nurse Radojewski - sorry - that
5 it was raised first with her by Nurse Costello and
6 then she later spoke to Nurse Radojewski in the
7 fall, in October, about it and was told at that
8 time that the team was getting support from each
9 other and it was not really necessary. So the
10 evidence would seem to suggest that this discussion
11 went on some time earlier than January or February,
12 but you have no recollection of it at that time?

13 A. No, I don't.

14 Q. When you did hear them in
15 January or February what was the proposal if any,
16 that was being discussed?

17 A. It was my understanding that
18 perhaps in addition to Carol Putherbough and Janet
19 Bead who were the two clinical specialists on the
20 floor that we have another person act as a resource
21 person.

22 Q. Again if the matters were
23 discussed as the evidence suggests from some time
24 in August through to October and you were not
25 involved in the discussions at that time, would you
take that as an indication that perhaps others were



1

2

feeling distressed from the situation more than you
were and were seeking out resolutions that perhaps
you were not involved with at that time?

3

4

5

A. It could be. I just don't
remember.

6

7

8

9

10

11

12

Q. Nurse Johnstone says in
Volume 103 between pages 3476 and 3477 that before
she spoke with Radojewski she spoke with you and
with Phyllis Trayner as well as other members of
the team about the possibility, to see whether it
was something that was needed or wanted. Do you
have any recollection of that?

13

14

A. I don't recall that. I recall
talking to Lynn but my recollection is that it was
later on.

15

16

Q. It could be then perhaps that
your timing on that particular topic is out?

17

18

19

A. It could be.

Q. That it did happen in the fall
as opposed to the early winter?

20

21

A. I don't remember it happening
then. I remember it happening later.

22

23

24

25

Q. The deaths dropped off of
course in January and February in terms of numbers
whereas after July and August and September they were



1

2

3

4

high and the stress as we have heard it was at a peak at that time, which perhaps would suggest that the issue was first raised back in the fall?

5

6

7

8

9

10

11

A. They were at a peak I would say the middle of August and I left to go away for two weeks and I guess I went away on vacation and I felt much better when I came back, maybe just because I had been able to get away and I don't recall that September was a particularly stressful month. I remember it as being much better after I got back from vacation.

12

13

Q. Certainly when you left in the middle of August, stress level was high?

14

15

16

17

18

19

20

21

22

23

24

25

A. Yes, it was terrible.

Q. Now we have heard from again

a number of your colleagues about Phyllis Trayner's reaction to the various arrests and deaths and we have heard from more than one that Mrs. Trayner more than anyone else talked about the deaths constantly, sometimes to the point where other nurses were disturbed and distressed by the fact that she dwelt on them to such a degree. In the case of Mrs. Johnstone, at one point she found she had to stop talking to Phyllis in order to get away from her constant discussion of these deaths. Was that your



1

2

experience that she more than anyone else was pre-occupied with the deaths of the children?

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

A. After an arrest occurred,

Phyllis seemed to need to have a period of time when she would sit down and want to talk about what had gone on in the house beforehand, and this is when she often was quite emotional. I did not find that unusual. As I say, we all react differently.

Q. Did you find that after that period of time, immediately after the death when she would need time to talk about it, that she continued to discuss the death and seek reassurance as to everything possible having been done for the children, and no one being at fault?

A. I think that is the kind of behaviour she displayed at times, yes.

Q. We have heard as well that after Justin Cook died, and you have indicated that a blood sample was taken from Justin Cook after he died which was unusual --

A. I did not remember that but again that appeared in my notes so that is the most accurate.

Q. So you are prepared to accept the accuracy of that?



1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

A. I certainly remember the
samples being taken from the intravenous bags and
what not.

Q. That of itself was an unusual
occurrence?

A. Yes, it was unusual.

Q. And we have heard that Phyllis
Trayner was very agitated at the sample being taken
from Justin Cook after he died and concerned about it
to the point of demanding an explanation for it, and
very upset at not receiving an explanation. Did
you notice that reaction in her?

A. Yes, I did.

Q. Did you share the same type
of concern that she had about the sample being taken?

A. It did not concern me in an
undue fashion, no.

Q. Were you puzzled by the fact
that she was so agitated that there be an explanation
for the sample having been taken?

- - - -



BB.1
DM.
jc

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A. I wasn't puzzled by it, but I think I wished that she would stop going on about it.

Q. And in what way did she go on about it?

A. Again when it first happened, and when Dr. Jedeikin went into the room to get the samples and when he came out, and I believe that morning after the arrest she said a couple of things, you know: "Why are they doing that?". Then at the Monday night meeting she still was telling the other nurses who had not been there what had gone on, and sort of saying "Why were they doing that? What are they looking for? What are they trying to find?"

Q. Did she speculate at all as to what she thought they were looking for or trying to find?

A. I don't recall that she speculated. I got the impression that she was concerned that we had done something wrong.

Q. And that this taking of the sample was part of some examination of the situation that might reveal something had gone wrong?

A. I don't know what she thought, really.

Q. All right. Now we have heard



BB.2

1

2

3

4

5

6

some evidence concerning the topic of euthanasia, or mercy killing. Do I understand that this is a topic that is of a certain amount of interest within the medical profession generally and has been for some number of years?

7

A. I think that is true to say, yes.

8

9

10

Q. And I gather that the central focus of this issue insofar as it relates to the children involved the quality of life that they can expect?

11

A. I guess so, yes.

12

13

14

Q. We have heard that the topic of quality of life was something that from time to time was discussed in a general way on 4A?

15

A. I believe it came up on occasion, yes.

16

17

Q. And did you yourself get involved in any discussions from time to time about this?

18

19

20

21

22

A. I can't remember any specific instances, but yes, I believe - in particular when we had children on the floor who - and the physicians for some reason had ordered a "No Code" or ordered "Do not resuscitate", then I think that was probably one of the times that spurred conversation.

23

24

25

Q. I wasn't suggesting a specific



BB.3

1

2

3

4

5

conversation with respect to any child, but your recollection is that from time to time you may have been involved in these conversations on the topic generally?

6

7

A. My recollection of them, the one - any time that I can remember, seemed to be where we had a "No Code" child on the floor.

8

9

Q. And this would generate discussion about what, the pros and cons of euthanasia?

10

11

12

13

14

A. Well, I wouldn't term it euthanasia, I would term it, as you described, more quality of life and life expectancy, and we as nurses, how when a physician ordered a "No Code" how we felt about supporting or not supporting that.

15

16

Q. And did people then express their views on those occasions with respect to their support or lack of support for that type of an order?

17

18

19

20

A. Yes.

21

22

23

24

25

Q. And on occasions when they were discussed, did you express your own views with respect to that?

A. In response to the "No Code"?

Q. Yes.

A. Yes.

Q. What were those views?



BB.4

1

2

3

(2)

4

A. I think that in most of the cases where a physician had ordered a "No Code" I could agree with them.

5

6

Q. Now on any occasion did you hear Phyllis Trayner express her views on that subject at these discussions?

7

8

A. I could have, but I don't remember.

9

10

11

12

13

14

15

16

17

18

19

20

Q. Liz Radojewski in her evidence told us about a conversation that she had had with you on one occasion that concerned your brother's philosophy regarding babies and the quality of their life. I think she indicated that his philosophy, as related by you, was that one - we are talking about sick babies on the cardiac ward, that one could not grieve or be sorry when the babies died because the quality of their life was going to be so poor in any event, that perhaps it was better that they died. My question to you is, firstly, do you recall that and agree with her account of the conversation she had had with you?

21

22

23

24

25

A. My recollection of that conversation was that it was in around the beginning of September, I had just returned from holidays and I was concerned that my brother and I were going to be



BB.5

1

2

3

4

5

6

working together on the cardiology floor. In the past we had worked in an area where the head nurse that I was working under thought it was quite unethical that a brother and sister should work together.

7

Q. Was that in Vancouver?

8

A. That's right.

9

Q. Yes.

10

11

A. So I wanted to approach Liz and

ask her if she had any misgivings about my brother and I working together, and she said "No".

12

13

14

15

16

17

18

19

20

I believe that we got into then a discussion of the deaths in July and August, and how glad I was that I had a break. I believe that in talking to her at that time I told her that my brother had tried to help me through those deaths that had occurred in July and August. I think he was helping me to try and feel better and to say that perhaps it was the best thing to look at the quality of life. As I say, I think it was his way of trying to help me accept that we had lost a number of sick children.

21

22

Q. And did you indicate to her at that time whether or not you shared that view of dealing with the deaths?

23

24

25

A. I don't know whether it was a



BB.6

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

matter of agreeing or disagreeing, I think I was sharing with her one of the ways that had helped me to get through those deaths.

Q. Just while we are on that topic, I take it that you and your brother are very close?

A. I don't know whether I would say very close, we have our --

Q. Normal brother and sister relationship?

A. Yes, normal brother and sister relationship.

Q. But you and he both worked together at the hospital in Vancouver?

A. Right.

Q. And did you go out there after he had gone?

A. Yes, I did.

Q. Was that the reason why you went out there, to work with him?

A. No, it was not.

Q. Or did the opportunity to work there come up after he was there?

A. I believe he knew well in advance that he would be going there. I think that it was some time in late June that I actually accepted



BB.7

1

2

the position at Vancouver General.

3

4

Q. So that was more of a coincidence than anything else?

5

A. Yes, it was.

6

7

Q. And then the same on your return to Toronto, the coincidence that the two of you worked at The Hospital for Sick Children?

8

9

10

11

12

13

14

15

16

A. I think that initially when my brother had, I don't know exactly how it works, but when they are finished their medical school they apply to certain areas and he had applied to Sick Children and somehow it got mixed up in the computer, or in the mail, and his request to go to Sick Kids never arrived, and so in terms of numbers he ended up having to go to Vancouver. So then it was his every intention to hopefully do part of his Paediatric residency at The Hospital for Sick Children.

17

18

19

20

Q. And your return to Toronto then and your securing a position there was in fact a coincidence in terms of his own desire to spend part of the time there?

21

22

23

24

25

A. Certainly, it was my personal decision.

Q. Well now, dealing with some of these children; I wanted to ask you one question about



BB.8

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

the death of Lombardo now. You indicated that you
thankfully took holidays in December from, I think
it was the 19th through to, do you recall what day it
was that you returned?

A. It was the 27th that I returned,
I forget what day it was that I actually started my
holidays.

Q. All right.

A. Some time, the 18th or the 19th.

Q. You indicated that during that
period of time you were not at the Hospital at all
from the time you left to the time you got back?

A. Right.

Q. Did you spend your holidays in
Toronto, or were you out of the city?

A. No, I was in Belleville.

Q. You were in Belleville for that
period of time?

A. Yes.

Q. Now my friend Mr. Lamek asked you
about - I'm sorry, it was Mr. Sopinka who is also my
friend.

MR. SOPINKA: I have not conceded that.

MR. HUNT: Q. He asked you about a
phone call that you received in Belleville from



BB.9

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Liz Radojewski, concerning the death of Baby Pacsai and the possibility of an inquest into it. You explained that while you were upset at the phone call, or upset at Nurse Radojewski for having made the phone call to you, I think you said it could have waited, that she could have told you face to face as opposed to in a telephone conversation?

A. Yes. When I was not in Toronto and that she made a specific point of calling me while I was away.

Q. So you felt that that was something where her reaction in terms of calling you was something that was a bit of an overreaction, she could have waited until you were back and deal with it in a normal business or professional way at the Hospital?

A. Yes.

Q. Well, what she really told you in that conversation I take it was that there was likely going to be a coroner's inquest, or certainly an investigation into the death of Baby Pacsai, and that it had been established by that time, which was mid-week I think, the week after Baby Pacsai died, that there was an extremely high level of digoxin in the baby, and it was either, you were either told it was a level of 29 nanograms or very high; you knew



BB.10

1

2

that by the end of the phone call?

3

A. Yes.

4

5

Q. Now what I suggest to you is that really that was extremely important information for you to have?

6

7

A. It was fairly important.

8

9

10

11

12

13

Q. Because what she was saying to you was, look, for own purposes and protection you ought to sit down and write out your recollections of what happened that evening, because it looks like there is going to be an inquiry or an investigation into this and you are going to want to have some record of what happened?

14

A. Right.

15

16

17

Q. And I guess that it was even more critical for you to know that inasmuch as you on the medication record gave the last dose of digoxin that the baby had?

18

A. That's right.

19

20

Q. And now it appeared that he died with a tremendously high level of digoxin?

21

A. Yes.

22

23

24

25

Q. So my question really is, why on earth would you be upset with her for phoning you sort of immediately, to tell you to do something for



BB.11

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

your own protection when it involves something so serious as a situation that prevailed?

A. She was telling me something very serious and she upset me and she scared me. I in fact did write the notes that were requested and do everything that she asked me. My feeling was that here I was not in Toronto and she was telling me that something that - she was telling me something without really offering me any support I think was the way I looked at it, and that by phoning me at home and telling me something she alarmed me and yet though she wasn't there for me to see what kind of reaction she had to it. By talking to me over the phone I felt that she was telling me something very important but it was to me something that she should have been telling me in person when she could help me to understand exactly what was going on. I think my main feeling was that I was isolated.



1

2

CC/BM/ak

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q. Well, did you sense that she was in any way accusing you in the manner in which she delivered the information to you or was taking an adversarial position to you at that time?

A. No, it was more that she presented the facts which alarmed me.

Q. They were pretty alarming facts.

A. They were.

Q. It would be hard to down-play them?

A. Right. I guess it interfered with my time away from the Hospital to one extent but not so much that, that there wasn't anything I could do because there wasn't anyone I could talk to or discuss what this actually meant.

Q. So, you were alarmed understandably by the information and you really needed to be there to see for yourself what the situation was, what was going on, what people were concerned about and saying.

A. Yes.

Q. All right. So, I suppose in fairness to her it really wasn't something that she, or was her fault, she was doing you a good



1

2

turn really by alerting you at the earliest opportunity
of the situation.

3

4

A. Yes, except that she was told
that she was to - it was my understanding that she
was told to contact the nurse who had looked after
Pacsai that night. She told me that when she phoned.

5

6

7

8

Q. All right, as opposed to you
you mean?

9

10

A. Pardon me.

11

Q. I don't understand your
comment.

12

13

14

15

16

17

A. When she initiated the
conversation she said that she was informed, she
was asked I believe by Dr. Fowler to get in touch
with the nurses who had been involved with Pacsai
and she said that there were some discussion about
whether Miss Costello would phone me or she would
phone me since the baby had been on 4B.

18

19

Q. All right. No question though
that you were involved with Pacsai that night?

20

A. Right, no question.

21

22

Q. So that you were one person
that had to be contacted about this?

23

A. Right.

24

Q. Well, in any event, you took

25



1
2 her advice or suggestion and you made up your notes
3 with respect to that?

4 A. Yes, I did.

5 Q. You made them up earlier than
6 you would have had she waited for you to get back
7 to the Hosiptal on the Friday, I think it was, or
8 the following week.

9 A. But I was never asked for
10 them by her.

11 Q. No, that's true. I suppose
12 the purpose of those notes was to assist you in the
13 event of an inquest or an inquiry?

14 A. Right.

15 Q. Now, with respect to the
16 notes that you made at that time, I know we have
17 been given the benefit of the notes you made for
18 Mr. Cooper concerning Miller and Pacsai. The notes
19 that you made that night, which would have been the
20 earliest account that you had of Pacsai, did you
21 keep those?

22 A. The notes that I made on
23 Mrs. Radojewski's advice?

24 Q. Yes.

25 A. Yes, I did.

Q. Are those the ones that we



1

2

received?

3

A. Yes, they are.

4

Q. Well, the ones that we

5

received I thought had a reference on them to being
made for Mr. Cooper.

6

7

A. I was told to put that at
the top.

8

9

Q. Oh, that went on afterwards?

10

A. Yes.

11

Q. All right. And then there

12

were comments that were made in the margin of some
of those notes. Yes, there were comments that were
made in the margin of some of those notes that you
indicated were put on by someone else?

13

14

15

A. Yes, they were.

16

Q. All right. So that the

17

notes that we have received, which are Exhibit 393,
were made by you in Belleville.

18

19

A. I'm not sure whether I had
returned to Toronto yet or not.

20

Q. All right. They are made

21

after the call from Liz Radojewski and certainly
before the incidents of the weekend of the 21st/22nd
when Babies Miller and Cook died.

22

23

A. Right.

24

25



1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q. And then they were made into notes for the purpose of legal advice afterwards by adding that at the top.

A. Right.

Q. All right.

A. And the writing that appears in the margin is not mine.

Q. All right, that belongs to one of your counsel I take it?

A. Right.

Q. Okay. Then obviously the notes that you made with respect to Miller and Cook were made after you were arrested on the 25th and after Mr. Cooper became involved?

A. Right.

Q. All right. Now, other than those notes dealing with Pacsai, Miller, and we have heard about notes that were made with respect to Baby Cook, did you make any notes about the events of any other evening when any of the other children that we are concerned with here died?

A. No, I did not.

Q. So, you made them with respect to Pacsai, Miller and Cook?

A. And I did not myself make



1

2

notes on Estrella but there were notes that were
made with Mr. Cooper and myself.

4

Q. I see.

5

6

A. And I think they appeared in
the first person.

7

Q. I see, fine.

8

9

10

11

A. And during the middle of the
preliminary hearing when the similar fact evidence
was submitted I believe I made a few notes on the
children that were being introduced at that time
but they were with the use of the chart.

12

13

14

15

16

17

Q. All right. But the critical
ones from the point of view of assisting the
Commissioner with an accurate recollection recorded
at the time with respect to these deaths would be
certainly Pacsai and Miller and Cook which were
made, I think you said the first part of April?

18

A. Right.

19

20

Q. And Estrella was made at
some point in time after that or at the same time?

21

22

23

24

25

A. The same time but I believe
sort of what I was asked to do was make the notes
and I got through Miller and Cook and then Mr. Cooper
and I actually compiled the notes on Estrella
together.



1

2

Q. All right. Well, with respect

3

to Baby Cook, after the Baby died, I know you have

4

said that you assisted in retrieving some of the

5

equipment, the IV bag and some of the tubing,

6

et cetera from the garbage but what happened in

7

the room immediately after the baby died? Was

8

there a cleanup of some sort that went on?

9

A. It started, yes.

10

Q. As I understand it there are

11

two aspects to cleaning up the room; one is getting

12

the baby ready for the parents to view and the

13

second one is cleaning up the room and putting it

back in order.

14

A. Right.

15

Q. So, in terms of preparing

16

the baby for the parents, who was responsible for

that?

17

A. I was.

18

Q. And did you do that alone or

19

did you have assistance?

20

A. I had assistance.

21

Q. Who helped you on that?

22

A. I believe it was Janet

Brownless.

23

Q. And then in terms of the room

24

25



1
2
3 itself, cleaning of the room, who was responsible
4 for that?

5 A. It's my recollection that
6 Dr. Jedeikin left the room after the arrest and
7 went to the phone and called Dr. Fowler to notify
8 him that the baby had died. It was my understanding
9 that Dr. Fowler had given Dr. Jedeikin certain
10 instructions because Dr. Jedeikin then came back to
11 418 and asked that everything be left for the time
12 being.

13 Q. All right. So, what instructions
14 did you think he had been given or did you understand
15 he had been given?

16 A. Well, I knew that he was asked
17 to take some samples because I helped him to take
18 those samples and that's all that I can remember.

19 Q. Any instruction then about
20 leaving the room as it was?

21 A. I just think that he meant
22 leaving the room as it was so that Dr. Jedeikin
23 could obtain these samples.

24 Q. All right. Now, how long was
25 Dr. Jedeikin gone from the room to make his phone
call before he returned to take the samples?

A. I don't remember.



1

2

3

Q. In the interim while he was gone then did someone begin to clean up the room?

4

5

A. I think that the cleanup started immediately after the child died.

6

Q. And who was involved in that?

7

8

A. I don't know, I imagine everyone. I recall that I went back to the desk because Dr. Jedeikin asked me to come and help him to recall the events before he had gotten there.

9

10

11

Q. This is for the purposes of his report to Dr. Fowler?

12

A. For his own notes.

13

Q. His own notes.

14

15

A. You will recall that he didn't arrive immediately, that Dr. Kantak arrived immediately.

16

17

18

Q. All right. And then when he returned to the room then after the phone call, did you say that at that point he indicated that he wanted the room left the way it was?

19

20

A. That's my recollection, yes.

21

22

23

24

25

Q. All right. Meaning that wherever the equipment was at that point in time it was to stay there and you interpreted that as meaning that was for the purposes of him taking



1

2

samples?

3

A. Right.

4

5

Q. Did he take those samples immediately when he returned?

6

7

8

9

10

11

12

13

14

15

16

A. I can't remember exactly but it seems to me that he went and he said leave everything as it is and after having spoken with Dr. Fowler and I believe I was still at the desk at this time because he came back and he asked me to review what had gone on and he was writing his physician's note. So that as soon as he hung up the phone from Dr. Fowler he went back to the room to tell them to just wait a minute and then he went to write his note and when he had finished doing that then he went back to the room to obtain the samples.

17

Q. Did you go back with him to the room?

18

A. Yes.

19

20

21

Q. He obtained the samples and then is it at that point that you began preparing the baby for the parents?

22

A. Yes.

23

24

25

Q. All right. And your understanding is that prior to him going back to the room



1

2

with you after talking to Dr. Fowler some aspects
of the cleanup of the room had already taken place?

3

4

A. That's right because we hadn't
received any instructions to the contrary before
that.

5

6

7

Q. All right. And his instruction
at that time was leave everything the way it is?

8

9

A. Right.

10

Q. And then you indicated that
you assisted in retrieving some of the equipment
from the garbage?

11

12

A. The intravenous bags and
whatnot had already been thrown in the garbage, so,
I retrieved them from the garbage so that he could
obtain the samples he wanted.

13

14

15

16

Q. And what garbage was this that
you retrieved them from?

17

A. The garbage from the room.

18

19

Q. In the room. Would this be
just the can with the plastic bag in it?

20

A. Right, at the sink, yes.

21

Q. And into that was put, what,
the IV bag?

22

23

A. And all the buretrol and
tubing.

24

25



1

2

CC12

3

Q. Needle and everything?

4

A. Well, the needle might have been taken off, I don't know.

5

Q. And where was that put then?

6

A. Where did I put it?

7

8

Q. Where did you put it after you retrieved it?

9

A. I put it back into the garbage after he had taken the sample that he wanted.

10

11

Q. Oh, I see. So, he took his sample out of the bag and it went back in the same garbage can that it would have been in before?

12

13

A. Right.

14

THE COMMISSIONER: These buretrols and IV bags are they not reusable?

15

16

THE WITNESS: No, they are not.

17

THE COMMISSIONER: What happens, why are they not? I know nothing about this, as you no doubt have discovered from that idiot question.

18

19

THE WITNESS: No, it is just that they would be contaminated. I mean, they should be fairly sterile and kept as clean as possible and that you wouldn't be able to use the same setup on the same patient. And also even for the same patient there is the chance of contamination or of it picking

20

21

22

23

24

25



1
2
3 up things, unwanted germs sort of thing. So, they
4 need to be changed quite often but certainly they
5 are not reusable.

6 THE COMMISSIONER: You do refill
7 them though from time to time?

8 THE WITNESS: The buretrol is
9 refilled because the bag is changed, the bag can
10 actually be changed.

11 THE COMMISSIONER: Yes.

12 MR. HUNT: Q. All right. Well,
13 you took a sample from the bag; was there any other
14 samples taken from the items you received?

15 A. I believe there was more than
16 one.

17 Q. All right. What about samples
18 of the tubing or the bag itself, was there any of
19 those taken?

20 A. It was my recollection that
21 he took the samples from the IV bags.

22 Q. And then the material went
23 back into the garbage where it had been to begin
24 with?

25 A. Yes.

Q. And at the same time or about
the same time he took the samples of blood from
Baby Cook?

A. Right.



DD
DP/cr

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q. And what happened after that.

Did the clean-up then continue in both cases?

A. Right.

Q. And the baby was prepared and removed from the room for the parents?

A. Yes.

Q. And the room itself then was cleaned?

A. Right.

Q. When he said that everything was to be left untouched when he went back to the room you interpreted that to mean while he took the samples or got the samples. Was there any indication from anyone after that point in time that the way in which the room was ought to be left, in other words leave the material in the garbage, leave the other items as they were?

A. I am not sure what you meant. My understanding was that as is the normal routine after an arrest, the room is a mess, so a clean-up operation just automatically starts to take place. It is my recollection that Dr. Jedeikin went, made a phone call and then as soon as he finished that phone call he went back to the room and said hold everything, leave everything the way it is right now.



1
2 So the clean-up operation had begun and that is why
3 the bags and what not were already in the garbage
4 and he said, just leave things as they are. I
5 thought that he wanted to take these samples but he
6 did not have time to do it right at that moment,
7 that it was more important to him that he go out to
8 the desk and write his notes before he took these
9 samples.

10 Q. I understand that, but after
11 the samples were all taken then as far as his
12 instructions went the room could be cleaned?

13 A. Right.

14 Q. In your notes that we have not
15 seen about Cook, did you record anything back at the
16 time about this incident after the deaths, the taking
17 of samples from Justin Cook, the reaction of Mrs.
18 Trayner, the taking of samples by Dr. Jedeikin from
19 the material that you retrieved from the garbage?

20 A. I had written that, yes, not about
21 Mrs. Trayner but about Dr. Jedeikin and taking the
22 samples.

23 Q. Do you remember the incident
24 that we have already discussed concerning Mrs.
25 Trayner's reaction to him taking samples from the
baby independently, but you have notes on the other



1
2 material?

3 A. Right.

4 MR. HUNT: I don't know what position
5 we are exactly in on this. It would be I suppose
6 of interest to know if the notes contained any other
7 information about this, but I am not going to press
8 the matter at this point if there has been some other
9 resolution to it worked out. I thought at one point
10 someone was going to read from the notes during my
11 friend's re-examination.

12 MR. SOPINKA: I agreed to do that with
13 respect to Mr. Strathy's question, but I have no
14 objection to my friend asking Miss Nelles to look
15 over her notes and say whether there is anything
16 she has not said on that subject in the notes and
17 if there is, to read it, but I am doing that without
18 prejudice to the noises that I hear back here saying
19 that I have now waived any privilege.

20 THE COMMISSIONER: Is that satisfactory
21 to you?

22 MR. HUNT: Second best.

23 THE COMMISSIONER: No, no. You can
24 press for the best but if second best is satisfactory
25 to you we will settle for that.

MR. HUNT: I am being guided by your



1

2

ruling a long time ago.

3

4

THE COMMISSIONER: I don't know that I made a ruling.

5

6

MR. HUNT: You did actually with Nurse Brown and she had refreshed her memory from the statement and I suggested that allowed me to see it.

7

8

9

THE COMMISSIONER: At least I agree with you, if she has refreshed her memory from a document, and I am not sure that she has. Has she?

10

11

12

13

14

15

MR. HUNT: I have not explored that exactly. I can. But the problem at that time was I think your ruling was even though Nurse Brown had refreshed her memory from it that that was not enough to let me see it and it was only after a number of repeated references were made to the statement that you decided to have it distributed.

16

17

18

19

20

21

22

23

24

25

THE COMMISSIONER: No, that was not quite it. Some time ago I made a ruling, I have made so many of them recently that I may have to get them indexed and put in a book, but one of them was with respect to the statements that were made to the police. The police had put them all down. They were the ones. I got a little worried that too many people had copies of those and too many people kept referring to them and it then became



1
2 unfair for all counsel not to have them. This is
3 quite different. These are notes which she made
4 herself. If she has referred to them in order to
5 refresh her memory I think the usual rule is that
6 counsel who are cross-examining have a right to look
7 at them. They don't become evidence at all but you
8 have the right to look at them.

5
9 Now Mr. Sopinka has suggested that you
10 might be agreeable, instead of looking at them,
11 because there apparently is something in there that
12 will affect Phase II. I think this is the main
13 reason, you might be content to ask Miss Nelles to
14 read it and see if there is anything else, and I
15 think he adds to that his own undertaking that if
16 he finds that there is indeed he will review it.
17 Are you satisfied with that?

18 MR. HUNT: I was operating under a
19 misapprehension as to what the rule was. If I could
20 just ask her if she has refreshed her memory from
21 them then I might apply to actually look at them
22 myself.

23 THE COMMISSIONER: All right.

24 MR. HUNT: Q. You have heard all that.
25 The point is did you use these notes with respect
to Cook, read them over in preparation for testifying



1

2

here to refresh your memory as to the events?

3

A. Yes, I did.

4

Q. Did you do that recently or
when was the last time that you did it?

5

6

A. I think the last time I read
them was maybe Thursday or Friday of last week.

7

8

Q. Was that in preparation for
the interviewing that was going on last week of
yourself?

9

10

A. Yes.

11

THE COMMISSIONER: I take it all you
want to do is take a look at it.

12

13

MR. HUNT: I would like to take a
look at it.

14

15

THE COMMISSIONER: Do you have any
objection to that, Mr. Sopinka?

16

17

18

19

20

MR. SOPINKA: I think we have been
fairly liberal in producing them. The relevant
refreshing is in the witness box. The witness
refreshes her memory in the witness box. If the
witness refreshes her memory in the witness box then
there may be a different rule.

21

22

23

24

25

THE COMMISSIONER: If they had been
used for that purpose I think it would be reasonable
for him to look at them if he wants to, but I can



1
2 see there may be certain things in these notes that
3 might be for some reason privileged or might not be
4 relevant or something like that.

5 MR. SOPINKA: I submit the whole
6 notes are privileged. The only reason they are
7 getting them is because I am co-operating.

8 THE COMMISSIONER: They are not being
9 produced as evidence; they are not being tendered
10 and are not going to anyone except to Mr. Hunt to
11 look at. That is all.

12 MR. SOPINKA: Frankly, these notes
13 also contain matters that relate to Phase II and if
14 I had your assurance that they are not going to
15 be distributed far and wide --

16 THE COMMISSIONER: They are not
17 going to be distributed to anyone at the moment
18 except Mr. Hunt and they are not even going to be
19 distributed to him. He can look at them.

20 MR. SOPINKA: I am content for him
21 to look at them. He is fairly reliable.

22 THE COMMISSIONER: Would it be
23 convenient to look at them over the break?

24 MR. HUNT: Yes.

25 MR. TOBIAS: If I might just raise
one point.



1

2

MR. SOPINKA: I knew it was coming.

3

4

MR. TOBIAS: I am happy that I don't
disappoint you, Mr. Sopinka.

5

6

7

8

9

10

If your ruling as I understand it is
that they are not being put in as evidence but they
are to be used by counsel as an aid to cross-
examination because she has used them to refresh
her memory, then I don't understand how you can
allow Mr. Hunt to examine the notes without giving
all other counsel that same privilege.

11

12

MR. HUNT: Because I am cross-
examining.

13

14

15

16

17

MR. TOBIAS: As a practical matter
then each one of us in turn when we get up to cross-
examine will say that we want to see the notes and
all that will accomplish is a lengthy delay as each
one of us in turn stands up in the middle of our
cross-examination to read the notes.

18

19

20

21

MR. PERCIVAL: Mr. Commissioner, if it
will help you that is of course what I intend to do.
I am going to ask for them. It was up until yesterday
that we saw any notes of this witness and I am
delighted to see that there is something here.

22

23

24

25

THE COMMISSIONER: Is there some
possibility that we could exclude the Phase II



1
2 aspects of it. Perhaps we could put it between you
3 and Mr. Lamek to sort it out. Do you have a
4 solution to this problem, Mr. Lamek?

5 MR. LAMEK: I may have, Mr. Commissioner.
6 The notes were provided to me, I should explain,
7 on the understanding which I had from Mr. Brown
8 that they could be distributed to counsel if
9 necessary and that being so I am a bit puzzled that
10 Mr. Sopinka is now asserting some privilege in
11 respect to them. But in expectation that the question
12 of their distribution might arise I made an attempt
13 to delete from them those matters which go to Phase
14 II and maybe over the course of the break Mr.
15 Sopinka and I can agree as to the proper contents
16 going to Phase I only.

15 THE COMMISSIONER: What we will do
16 then is over the break - I take it you have copies?

17 MR. LAMEK: Yes.

18 THE COMMISSIONER: You can go to the
19 original, take a look at them, Mr. Hunt, whereas
20 Mr. Sopinka and Mr. Lamek will decide whether they
21 can agree on what is to be distributed.

22 Now, Mr. Percival, are you going to
23 be happy with that?

24 MR. PERCIVAL: Mr. Commissioner, we
25



10

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

worked out something on another occasion with Mr. Lamek's volunteering. I am quite content under the circumstances that I not be permitted to see any of these notes that relate clearly, in Mr. Lamek's judgment, to Phase II. I think that is quite proper because I don't intend to go into aspects of Phase II at this stage in any event.

THE COMMISSIONER: I think everybody will have to be content with that.

MR. PERCIVAL: We did that before, if you will remember, with the police reports.

THE COMMISSIONER: All right. I will leave it in your hands and in Mr. Sopinka's, Mr. Lamek, and while you are working I will have a cup of coffee.

---Short recess.

- - - -



DM.
jc
EE-1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

--- On resuming:

THE COMMISSIONER: Yes, Mr. Hunt.

MR. SOPINKA: Well, in my usual spirit of co-operation everybody now has the statement.

THE COMMISSIONER: I hope that everybody is metaphorical, it is not going to appear on the front pages of the Globe and Mail like that tomorrow.

MR. HUNT: It may very well be knowing counsel.

MR. PERCIVAL: Mr. Commissioner, that was because I threatened Mr. Sopinka with quoting the leading authority on Evidence called Sopinka and Lederman, that was directly against him.

MR. SOPINKA: I don't mind whether it is against me or for me as long as I sell more books. I am sorry now that I gave my friend the statement.

THE COMMISSIONER: Well now, with the document before you I even got a document I can tell you, also, the same document I think came to me, when they decided everybody else could see it, they, as an afterthought, decided to give me a copy, too.

MR. HUNT: I think I got it as an afterthought too.

MR. HUNT: Q Just to deal with the



EE-2

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Cook matter and your recollection of it here. The notes as I see them at page 215 don't have any account of the cleaning up of the room, or any materials that were retrieved from the trash and later put back, is that fair?

A. I don't have one.

Q. Well, in keeping with usual organization here.

MR. SOPINKA: When I said everybody --

MR. HUNT: Q. It is about half way down page 215.

A. 215.

Q. That is on mine in the upper right-hand corner.

A. Well --

Q. Please, I hope you have 215 or we are really in trouble.

A. Well, okay. I think that I have to explain that that is not my writing, that as I say these notes were prepared together with Mr. Cooper and I was responding partially to questions that he asked as well as to my recollection, so that I didn't write down everything that I remember happening.

Q. Fair enough.

A. I was sort of told to write down

(2)



EE. 3

1

2

the events of the evening.

3

4

5

6

7

Q. Let me just go back a step then because I might have misunderstood you before the break. I thought the notes that you did that were not prepared solely by you were - related only to Baby Estrella; was I wrong in that interpretation?

8

A. Well, as you will see the notes in the latter part are not my writing.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q. The writing changes.

A. So I sat down and started to

write what I remembered, and then I was joined by Mr. Cooper. Like he sort of told me, start to write down what you remember, and then he came in later and took up where I had stopped, or from where I had gotten to at that point.

Q. With you dictating, as it were, or giving him your account?

A. Right.

Q. And the portion on page 215

then that I referred to is in Mr. Cooper's handwriting, and it is his notation of what you were telling him about the events after Baby Cook died?

A. And some of - answers to some of his questions.

Q. Your answers to his questions?



EE. 4

1

2

A. Yes.

3

Q. And what you are pointing out

4

is that with respect to the incidents after Baby Cook

5

died and the retrieving of material from the trash

6

that you didn't - he didn't record all of your

7

recollections on that?

8

A. Right.

9

Q. On those events?

10

A. Right.

11

Q. The one he recorded apparently

12

deals with the taking of the blood sample and samples

13

from the intravenous bags because of the investigation.

14

He didn't set out in any detail your recollections

15

with respect to what happened in the room?

16

A. Right.

17

Q. So that just to sort of summarize

18

it; the notes that we have relating to Pacsai are

19

all yours except for the notations in the margin?

20

A. Right.

21

Q. Because they are the first ones

22

you prepared?

23

A. Right.

24

Q. The notes with respect to Miller,

25

Cook will be notes that you prepared while you were
sitting down with your counsel getting ready?



EE.5

1

2

A. Right.

3

Q. They are --

4

5

6

7

8

9

10

11

12

A. Most, I think in the case of Miller they are in most of my writing with writing in the margin; and that with Cook it is only half as you can see my writing; and with Pacsai I seem to recall that it was almost all my writing with just writing in the margins.

13

14

15

16

17

Q. Let's move ahead. I wanted to ask you about some of the comments that are attributed to you that Mr. Sopinka dealt with you with on Monday morning.

18

19

20

21

22

23

24

25

THE COMMISSIONER: Could I interrupt this just for a moment? Just for convenience if you do take the approach that this document can be an exhibit it would be easier for us, but you don't have to.

MR. SOPINKA: It can become an exhibit, I have no objection.

THE COMMISSIONER: Well, all right, let's make it an exhibit then. It will be Exhibit 394.

--- EXHIBIT NO. 394: Handwritten notes
re Justin Cook.

MR. SOPINKA: I just gave to



EE.6

1

2

Miss Nelles a copy out of my brief and I am going to
give her the one that everybody else has.

3

4

MR. HUNT: Q The first one I would
like to deal with is the comment that is attributed
to you after the death of Baby Pacsai.

5

6

7

A. Right.

8

9

Q You will recall that one. Now,
I am referring to Exhibit 32C which is part of the
documents put in at the preliminary hearing, and it
is Tab A in that volume, do you have that?

10

11

A. What is the exhibit number?

12

Q 32C, Tab A.

13

A. Tab A?

14

Q Yes, there should be three of
those.

15

16

A. I have 32C, Volume 3.

17

Q Is there a Tab A at the back,
near the very back?

18

A. Oh yes, I am sorry.

19

Q Now, that is a one-page document
dated January the 7th of 1982, and it is signed by
Phyllis Trayner. It purports to be a statement
attributed to you, made by her in the presence of
Sergeant Warr, Jerome Wiley and R. McGee re Pacsai.
This is the account that on January the 7th of 1982

20

21

22

23

24

25



EE.7

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

that Mrs. Trayner gave to one of the investigating officers and the two Crown Attorneys; saying that when Baby Pacsai died Sue said and then in quotes:

"I am relieved Pacsai died because now doctors would listen to her ... ", that is you:

" ... about babies being really sick. Maybe now doctors will listen when we call them in the middle of the Night."

Signed "Phyllis Trayner".

Now I think your evidence was that you didn't recall the exact words that you used. I put to you the written account on January the 7th of 1982 that Phyllis Trayner gave when being interviewed. I appreciate that you have now given your explanation of the circumstances in which you made your comment and the context. Would you agree with me that standing --

MR. SOPINKA: Wait a second. I don't think my friend - there is no proof that Phyllis Trayner made that statement and there is proof to the contrary. We have not heard from Mr. McGee, and his evidence as to how he supports that statement in light of what Mrs. Trayner said at her preliminary hearing



EE.8

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

which is quite different. That statement indicates that Susan Nelles said she was relieved that Pacsai died. Whereas in giving her sworn testimony this is what Phyllis Trayner said at the preliminary hearing, and this is in Volume 5 at page 971.

MR. HUNT: If I could just interrupt my friend before he gets a full head of steam up. The question I put to the witness was very particular. I said:

"On January the 7th of 1982 this is the statement that Phyllis Trayner signed and it is her signature at the bottom giving an account of a comment allegedly made by this witness."

Now, I haven't got into this question.

THE COMMISSIONER: That is not a question at the moment, it is the statement.

MR. HUNT: That is the statement and that is what I prefaced it by: "On January the 7th of 1982 this is the account she gave ... ", that is Mrs. Trayner gave to the investigating officer and Crown Attorneys.

THE COMMISSIONER: Yes.

MR. HUNT: And I haven't dealt with the application to cross-examine Mrs. Trayner at the



EE.9

1

2

preliminary hearing or anything else.

3

THE COMMISSIONER: No.

4

5

MR. HUNT: My question is not one that is designed to attribute to this witness the statement that she has already explained.

6

7

THE COMMISSIONER: Yes. All right.

8

MR. HUNT: And my friend, I think he is --

9

10

11

12

13

14

THE COMMISSIONER: I guess we will wait and see what his question is before - just don't answer the question until after. Let's have Mr. Hunt, obviously it won't be relevant if he is not going to ask her to confirm or deny this statement, it won't make any difference what she did say in the Inquiry.

15

16

MR. STRATHY: I don't know what the purpose in putting the statement to this witness is?

17

18

19

20

THE COMMISSIONER: Give him a chance, we will give him a chance and let us see what he says, for another couple of minutes and Miss Nelles has promised not to answer the question for the moment. All right.

21

22

MR. STRATHY: All right, let's hear the question.

23

24

25

THE COMMISSIONER: All right, go ahead.

MR. HUNT: I am glad Mr. Strathy has



EE.10

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

agreed to hear the question.

Q All right. Now, all that having been said, I preface my remarks by saying January the 7th of 1982, this is the account of a comment attributed to you, signed by Phyllis Trayner on that date.

Now you have indicated that you don't recall the exact words, you have given your account of the context in which you made the statement, et cetera, and that I think you have said that you were not relieved that the baby had died, because you were relieved that as a result of all the circumstances there would be an investigation into the matter. Is that fair?

THE COMMISSIONER: I am not sure if that was at the same time. I thought that was something she said, she was relieved when the investigation took place and that was in March.

MR. HUNT: No, what I am suggesting to Miss Nelles is that rather than this, what we have in front of us here, a statement, I am relieved Pacsai died; your comment is, well, you can't recall the exact words, was to the effect that you were relieved that the result of this whole incident was going to be that there was going to be an investigation into



EE.11

1

2

the circumstances that would get to the bottom of it.

3

MR. STRATHY: Well, maybe what my

4

friend can do is put to the witness also Mrs. Trayner's

5

evidence in chief at the preliminary, where she

6

explained that statement that my friend has in very

7

precisely the same terms the witness has used before

8

this Commission.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25



/BM/ak

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. HUNT: When Mrs. Trayner is here I will do all of that for my friend's benefit. But what I am trying to do right now is to get from Miss Nelles, and I am just really setting the stage, I know my friend is very sensitive about this because Mrs. Trayner of course was cross-examined under Section 9 at the preliminary hearing to get to the bottom of it but I'm not interested in that.

THE COMMISSIONER: Could we just close up this tab and not make any reference to it at all and then rephrase your question. Because I think you can do it quite well without that.

MR. HUNT: Yes, I think I can.

MR. STRATHY: I might say I'm not sensitive about the fact that Mrs. Trayner was cross-examined, I'm sensitive to my friend only putting half her evidence to the witness without any explanation of it.

THE COMMISSIONER: Yes, all right.

MR. HUNT: I haven't put her evidence yet.

THE COMMISSIONER: I'm going to suggest that he now just summarizes what the evidence is, put it to her what evidence she has given and you say, what was the nature of the



1
2 relief or whatever you want to do and we'll get
3 there.

4 MR. HUNT: I will try it that way.

5 Q. Please, I want you to listen
6 to me, you look suspicious.

7 A. No.

8 Q. I'm not trying to misstate
9 what you have told us. Am I correct that your
10 recollection of this comment that has been attributed
11 to you is not as we have just seen, a comment that
12 you were relieved that Pacsai died, but rather,
13 you were relieved at the fact that there was going
14 to be an investigation into the cause of death that
15 would get to the bottom of the question of why he
16 did.

17 A. I don't think that is exactly
18 it.

19 Q. All right. You help me with
20 what it is.

21 A. I think that I was trying to
22 say that I was not relieved, as you put to me, that
23 the baby died. In fact, I was relieved that now
24 maybe it could be seen that what I had been trying
25 to say during that night and trying to express to
the physicians that this baby was ill and that he



1
2 was exhibiting signs of not being well and in fact
3 the physician had gone home that I felt should be
4 listening and that I felt that now at least this
5 would be made known, that here was a nurse who had
6 said that from every observation she had this child
7 was not well and that obviously the doctor didn't
8 believe that because he went home.

9 Q. All right.

10 A. But the evidence here showed
11 that in fact he hadn't been well and he did need
12 attention.

13 Q. And your relief was at the
14 fact that the was going to become known?

15 A. Known.

16 Q. All right. All I want to say
17 is Mrs. Trayner can come here and explain why her
18 name is on that piece of paper and anything else she
19 wants to explain about it, but what I'm saying is
20 that that is very different than what we just
21 looked at, the statement attributed to you "I'm
22 relieved that Baby Pacsai died".

23 A. That is not my wording or that
24 is not at least what I meant by that statement.

25 Q. All right. You wouldn't want
to be associated with that statement "I'm relieved



1
2
3 that Baby Pacsai died".

4 A. In that straight wording, no,
5 I would not.

6 Q. All right.

7 MR. STRATHY: I wonder now,
8 Mr. Commissioner, to complete the story whether I
9 could read to the witness just while we are on this
10 subject the way Mrs. Trayner explained that statement
11 at the preliminary hearing and ask if it accords
12 with what her statement was at the time, that is,
13 Miss Nelles' statement.

14 MR. HUNT: There are pages and pages
15 of cross-examination by the Crown of its own witness
16 on this statement at the preliminary hearing and
17 if my friend wants to read it all, I mean, we are
18 into a bit of a contest here.

19 THE COMMISSIONER: I think the
20 best thing I can do is wait until - you want to do
21 it right away, is that it?

22 MR. STRATHY: There is one sentence
23 and I would simply like to put the one sentence to
24 the witness and ask whether that accurately expresses
25 the sentence.

MR. HUNT: My friend knows full
well there is much more than one sentence behind



1
2
3 Mrs. Trayner's position that was taken at the
4 preliminary hearing and to select one sentence out
5 to say that that is what her position was is very
6 misleading.

7 THE COMMISSIONER: I am allowing
8 him to interrupt your cross-examination to put that
9 one sentence and then of course you have the right
10 to go right ahead and put anything else you want
11 and that's the only way I can do it.

12 MR. HUNT: I promise you I won't
13 read into the record the pages that go to the
14 explanation of it.

15 THE COMMISSIONER: All right.
16 Well, you can change your mind between now and
17 tomorrow and if you want to you may. All right,
18 we will just interrupt it for that one question.

19 MR. HUNT: I will save it for my
20 friend's client.

21 THE COMMISSIONER: All right,
22 go ahead, Mr. Strathy.

23 MR. STRATHY: Page 970 of the same
24 volume, Volume 5:

25 "I can't remember the exact words.

The word 'relieved' did come in.

I took it to mean when Susan had



1
2
3 "said it at that time in the conference
4 room was that she was relieved that
5 now maybe the doctors would listen to
6 her, especially that night, and hope-
7 fully that another tragedy like this
8 would not occur."

9 Miss Nelles, does that basically
10 set out the sentiments that you expressed that
11 night?

12 THE WITNESS: That's right.

13 MR. STRATHY: Thank you. Thank
14 you, sir.

15 THE COMMISSIONER: All right now,
16 Mr. Hunt.

17 MR. HUNT: I will save it all for
18 Mrs. Trayner.

19 Q. The point here is that state-
20 ment we looked at signed by her is not something
21 you want to be associated with?

22 A. Not in the wording that
23 was put in, no.

24 Q. All right. If you heard a
25 nurse make a comment like that "I'm relieved that
this baby died because now we'll get an inquiry
into it", you would take that as a very callous,



1
2
3
horribly callous statement by that particular person,
4
would you not?

5
6
7
8
9
MR. SOPINKA: Well, I submit my
friend is getting into Phase II. I don't see how
that is relevant to this Phase. What he is
suggesting is, the police had this statement and
they rushed off and charged Susan Nelles because
we have a callous nurse here.

10
11
MR. STRATHY: This statement was
made at the preliminary hearing.

12
13
14
THE COMMISSIONER: Well, that wasn't
the way I took it. I didn't take it as going to
Phase II. But at any rate, there you are. Now,
can we leave this matter?

15
16
MR. HUNT: It is probably going to
get worse.

17
THE COMMISSIONER: All right.

18
19
20
MR. HUNT: No, I submit it is
a perfectly appropriate question. I mean, we have
a confrontation obviously over what was said and
who said it and what was signed by somebody else.

21
22
23
24
25
THE COMMISSIONER: Well, no, I
think it is clear from Miss Nelles just what her
evidence is as to what she said and what she thought
at the time. But I don't see anything in the Trayner



1
2 statement that has anything to do with the investi-
3 gations, it has only to do with doctors listening
4 to nurses when nurses tell them that babies are
5 sick and that to me has nothing to do whatsoever
6 with Phase II.

7 MR. STRATHY: Mr. Commissioner,
8 the statement that my friend puts to Miss Nelles
9 is a statement made by Mrs. Trayner on January 7,
10 1982.

11 THE COMMISSIONER: That's right.

12 MR. STRATHY: Nine months after
13 the charges were laid.

14 THE COMMISSIONER: Yes.

15 MR. STRATHY: So, if it's not
16 Phase II I don't know what it is.

17 THE COMMISSIONER: Well, no, no,
18 he is not putting it to her for that purpose. At
19 least, he may be putting it partly for that purpose
20 but it also has some relevance to --

21 MR. STRATHY: He is putting it
22 to try and justify the conduct of his client.

23 THE COMMISSIONER: Well, he can
24 do that in Phase II. I refuse to accept it for
25 that purpose. I'm accepting it only for the fact
that the reaction that Miss Nelles had upon the



1
2 death of Kevin Pacsai.

3 MR. SOPINKA: Well then he can't
4 do that without giving the - that's our point.
5 He can't suggest to her that that was her reaction --

6 MR. HUNT: I didn't.

7 MR. SOPINKA: -- and he's not doing
8 that.

9 THE COMMISSIONER: But he told us
10 what her reaction was and that's the evidence I've
11 got.

12 MR. SOPINKA: Well then that's the
13 end of the matter for Phase I. Now he's saying
14 but if you had that statement and you heard a
15 nurse say that wouldn't you think that was a
16 callous remark. That can only be relevant to
17 justify what the police did.

18 THE COMMISSIONER: Well, I haven't
19 heard him say that.

20 MR. HUNT: I will explain it to
21 my friend.

22 THE COMMISSIONER: Yes.

23 MR. HUNT: Let's say that somebody
24 attributes a comment like that to another person,
25 to Miss Nelles, the comment "I'm relieved that a
baby died" is, as we are just about to get into I



1
2 suggest, a very callous, very distressing comment.
3 Somebody is suggesting that and that's not true
4 then the motives of the other person for suggesting
5 that at any point in time may well bear on the
6 question of whether or not the person to whom it
7 has been attributed was responsible for something
8 in connection with that. That's the purpose. To
9 my submission, that goes to by how and what means
10 the baby died, just as does much of the other
11 evidence that we have heard about Mrs. Trayner's
12 behaviour after the point in time when Miss Nelles
was charged.

13 THE COMMISSIONER: Well, I will
14 concede that the behaviour might well be - but what
15 more questions have you got with respect to this
16 particular statement.

17 MR. HUNT: This particular one?

18 THE COMMISSIONER: Yes.

19 MR. HUNT: Well, actually, if I got
20 of Miss Nelles her reaction to this very callous
21 comment that she doesn't want to be associated with,
then I am just about done that area.

22 THE COMMISSIONER: I'm not sure that
23 I accept your proposition it is quite as callous
24 as you say.
25



1

2

MR. HUNT: I was going to ask that
though.

4

THE COMMISSIONER: As you say it is.
Because in the Trayner - there is the explanation
of why she is relieved. Relieved may not have been
a very good choice of an adjective in this case.

7

8

MR. HUNT: Mrs. Trayner may explain
it however she wants. What she's got to explain is
why on a particular day she puts her name to a
document that says, that attributes to Miss Nelles
a very damaging comment and that is the behaviour
that we will have to deal with.

10

11

12

13

THE COMMISSIONER: Well, we will
come to the argument whether it is damaging or not
because I am not overwhelmed by the damage.

14

15

16

17

18

19

20

21

22

23

24

25

MR. HUNT: Well, that's the very
reason why I wanted to ask Miss Nelles, she's the
one who would be in the best position to know how
damaging to a nurse who was responsible for the
care of Baby Pacsai a remark like this is that
she was relieved that the baby had died, a baby
with an anatomically normal heart who had come in
from another hospital, someone has attributed to
her a remark that she was relieved when that baby
died which, in my submission I was going to get



1

2

into this, was callous.

3

THE COMMISSIONER: But that isn't

4

all she said. She said other things. She said

5

why she was relieved and she was relieved because

6

now the doctors would pay some attention to the

7

nurses.

8

MR. HUNT: That's right.

9

THE COMMISSIONER: And I don't know

10

whether that is a sentiment that is particularly

11

admirable or not but it is not just being relieved

12

at the death of a baby.

13

MR. HUNT: I agree. I agree it

14

goes on to say that the reason for the relief -

15

the point that is left though that I wanted to ask

16

Miss Nelles about that is attributed to her was the

17

remark that she was relieved that a baby died,

18

relieved that the baby died; in other words, I'm

19

glad that this baby died because now something else

20

will be done. Miss Nelles has been very clear

21

that that's not what she suggested or remarked or

22

a remark that she was making or intended to convey.

23

24

25



4apr84
GG
DPrc

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MR. STRATHY: No, Mr. Commissioner.

The one thing that strikes me as grossly unfair about what my friend is trying to do is that he is only putting half the story to you. In Mrs. Trayner's evidence at the preliminary, she said that she told Sgt. Warr and Mr. Wiley the whole story; in other words, the explanation for that statement.

We all know about police officers and Crown attorneys taking statements and the selectiveness of the way that the statements are written up.

MR. HUNT: That is an interesting comment.

MR. STRATHY: We all know that.

THE COMMISSIONER: I don't think you need to go quite that far.

MR. SOPINKA: I am going to call Mr. Strathy in Phase II.

MR. STRATHY: In my submission, it is grossly unfair of my friend to put only half the story to the witness and ask you to draw any conclusions.

THE COMMISSIONER: I cannot help but think you are making an awful lot out of what is a remarkably small matter. You have had the opportunity, and if there is one thing that is certain, Miss



GG2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Nelles has had full opportunity to say how she did feel on the death of Kevin Pacsai; so that at least is out. We still have not been able to take you off this, have we?

MR. HUNT: The last thing I wanted to do -- I see you are having trouble with it, which makes it more important for me to do it.

This statement that we have here, it is a callous one, a very damaging one.

THE COMMISSIONER: That is a question of argument. If you are asking whether Miss Nelles agrees or disagrees as to whether it is callous or not, I really, with respect to her, I don't care. I don't care whether she thinks it is or not. It is whether I do.

MR. HUNT: Would it not help you to know what the person felt that it was attributed to?

THE COMMISSIONER: Not a great deal. Sorry about that.

MR. HUNT: Don't be sorry.

THE COMMISSIONER: No. It was not made in her presence; she was not there. There is no reaction she had to take to it. It did not affect her. It took place in 1982, some ten months after the time that we are concerned with.



GG3

1

2

MR. HUNT: It did not affect who?

3

Miss Nelles?

4

5

6

7

THE COMMISSIONER: It could not affect anybody. It was made in January of 1982, and the last baby died in March of 1981. It is the cause of death we are investigating.

8

9

10

11

12

MR. HUNT: It may well have an effect on her in terms of some conclusion that might be reached by you as to how and by what means the babies died in terms of who may have attributed this comment to her, which she clearly indicates she did not make.

13

14

In my submission, it is relevant but I can take a subtle hint.

15

16

THE COMMISSIONER: Please.

17

18

19

20

21

22

23

24

25

MR. SOPINKA: You must have a better one than that, though.

MR. HUNT: Q. I guess I did want to move on to the comments that really have been attributed to you by Mrs. Cook with respect to preparing for the worst, if you will recall that incident. My friend again felt that was significant enough to deal with in chief with you and, to refresh your memory, it is my note that Mrs. Cook indicated that on the Saturday night before Justin died - we



GG4

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

don't know the time; it was some time late in the evening - when she came in to visit Justin, you said something to the effect, in response to a question about his condition, "Don't look at the best; look at the worst because he might not make it."

Indeed, I see in your own notes at page 213, about half-way down, that you record that, "The Cooks then asked me about his surgery and I explained he had been through a great deal that day and probably the best thing for them to do was to try and prepare themselves for the worst."

So, I take it whether or not we have the exact words of what was said, there is agreement that, at some point that evening, you suggested to them that, in respect of Justin, it might be best if they prepared themselves for the worst, in terms of his prognosis?

A. In terms of his surgery.

Q. Do I take it there is a distinction between that and him dying, or were you really saying to them, 'be prepared for him to die'?

A. I was answering their question about what would happen the next day in surgery or what was going to happen the next day when he went for surgery. I can't remember exactly how



1
GG5 2 they worded it but they asked me specifically about
3 the surgery and, because I was asked specifically
4 about the surgery and I was feeling that it was an
5 emergency surgery and, given the information that I
6 had and the information that they, as parents, were
7 portraying to me, I was concerned that they had not
8 ever faced any kind of possibility that he might not
make it.

9 Q. So, in response to the
10 specific question about the surgery the next day,
11 you were telling them, 'be prepared for the worst';
12 i.e. 'be prepared for Justin to die'?

13 A. To be prepared that that might
14 be one of the outcomes, yes.

15 Q. So, you had knowledge, I
16 believe, that that kind of a comment about a patient's
17 prognosis was something that was usually done by
the doctor?

18 A. Right.

19 Q. And you will agree with me
20 that, to avoid having to tell them a lie about his
21 condition and the surgery at that point, you could have
22 told them the serious nature of the surgery and then
23 referred them to a doctor or taken steps to get a
24 doctor to speak to them about that?
25



GG6

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

A. That was not my decision at the time.

Q. I appreciate that, and I know you had to make a decision at the time, but that was open to you and still would have prevented you from having to tell them a lie?

A. I suppose, yes.

THE COMMISSIONER: I'm sorry, but what is the lie?

MR. HUNT: Miss Nelles indicated on Monday that the motivation for telling them this news was to avoid having to tell them a lie about, I take it, the welfare of the child.

THE WITNESS: That I thought everything would be rosy sort of thing.

THE COMMISSIONER: It was to avoid telling them a lie, she told them the truth?

MR. HUNT: That is right.

Q. So, the point here being that, in the late evening on the Saturday, you advised them, in respect to Justin's condition, to prepare for the worst?

A. To try and prepare, yes.

Q. When he died then five or six hours later, some time in the early morning hours,



GG7

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

did you think back to your comment of the night before, five hours previous, to the Cooks about preparing for the worst - 'I wonder how they might take that'?

A. I don't remember if I did that. I could have.

Q. I take it though that it would not surprise you that they would remember a comment like that when their child died suspiciously five hours later?

A. Suspiciously?

Q. I'm saying it would not surprise you if it turns out that their child died suspiciously five hours after the comment was made; they would remember it?

A. They would remember what I said. I don't know whether I would term -- I would not have said that he died suspiciously.

Q. No, no. I am not asking you to comment on that. I am just saying that the facts as we have them here, lists it as one of the suspicious deaths in the Atlanta Report. If it turns out that the baby died five hours after the comment was made under suspicious circumstances, it won't surprise you that they remembered that?



1

GG8 2

3

A. I remembered it, so I am not surprised that they remembered it.

4

5

Q. And you are not sure whether you thought about that and the significance of that immediately after Justin Cook died?

6

7

A. I am sure I remembered that I told them.

8

9

Q. You are sure you remembered that you told them?

10

11

A. I think I remember that I told them but I don't remember thinking that they would think ill of that.

12

13

14

15

16

17

Q. Then we have as well heard about the comments that, again, my friend dealt with in his examination in chief of you, something to the effect of - and I am not trying to misquote it but, to the effect that 'six out of seven ain't bad' or 'four out of six ain't bad'.

18

19

This was attributed to you by a number of people, who suggested that the comment was made by you after the death of Justin Cook.

20

21

Do you recall the comment I am talking about?

22

23

A. Yes, I do.

24

25

Q. Now, you, in giving your



GG9

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

evidence, suggested, I believe, that you had never spoken to Lynn Johnstone about that comment?

A. I don't remember talking to Lynn about that, no, because she was not there at the time and I don't remember seeing her again afterwards.

Q. You appreciate that she has given evidence, at Volume 104, Mr. Commissioner, pages 3783 to 3786, that it was reported to her that you had made this comment and that she spoke to you about it and asked you, or suggested to you that you were not serious, to which you said, no, and she felt you were just dealing with your frustrations that way. Were you aware that she had said that?

A. I learned from her testimony that she had said that but I don't recall that she said that to me at the time, no.

Q. That did not refresh your memory as to any conversation you might have had with her?

A. It is my knowledge that I made that statement in the morning after Justin Cook died in the utility room and that she was not present and I did not see her again that morning. So, I can't understand how she could have heard it before then.



GG10

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q. There is a difference in recollection between you and Lynn Johnstone as to whether or not she spoke to you about you having made the comment?

A. Right.

Q. In any event, I take it that, given the nature of the comment, and you have now explained the context in which you meant it, it doesn't surprise you that certain people recall having heard you make it?

A. In answer to your question that they recalled hearing...?

Q. It doesn't surprise you that they recall it, given the nature of the comment and the circumstances in which it was made?

A. Yes, it does surprise me to some extent.

Q. Would you agree with me that on its face, without your explanation for it, it does appear a somewhat callous comment?

A. Not in light of what had happened and that, in fact, what I was saying, that four or five or whatever out of seven babies had died in the last seven nights that we worked and that it was a fact, and my feeling when I expressed that



1
GG11 2 was saying what a terrible record. In other words,
3 how could anyone imagine such a record.

4 As I pointed out before, the
5 thing that I noted in looking at that statement was
6 that the one person that viewed it as a callous remark
7 and one that was in poor taste was the one person
8 who had not been there during that time and could not
9 possibly know what, as a team and what as nurses,
10 we had been through.

11 Q. Of course, Miss Johnstone
12 indicates, in her recollection, she thought enough
13 of it to approach you and confirm that you did not
14 really mean that.

15 A. But she is the only one who
16 gives testimony that it was said before that morning.
17 Everyone else recalls it that particular morning, and
18 that is when I recall it.

19 Q. Really, you are giving me
20 an argument in favour of your interpretation contra
21 Miss Johnstone's.

22 A. Which I can't do. I am saying
23 that I recall that I said something to that effect
24 and that the people who were in the room at the time
25 that I remember being in the room, Marie Mandal was
the one who was not present who thought it was not an



GG12

1

2

appropriate remark.

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q. Let us move on to Allana

Miller. I take it you have heard about the evidence
that Bertha Bell gave to this Commission concerning
her seeing Phyllis Trayner injecting a medication into
the buretrol of Allana Miller sometime at or shortly
before 12 midnight on the night that she died?

A. Yes.

Q. And can I ask you, when you
heard of that evidence, was that the first time you
had ever heard of that?

A. Yes, it is.



HH
DM/cr

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q. And were you shocked when you heard that?

A. Yes, I was.

Q. And I take it you were shocked when you heard that because you realized that there was no medication prescribed to be given to Allana Miller at or shortly before 12 o'clock?

A. Right.

Q. And you appreciate that one of the ways in which Mrs. Bell picks the time of that administration is because she went into the room at the time you passed her in the hallway taking Justin Cook down to the echo lab?

A. Right.

Q. And you have indicated that you took Justin Cook down to the echo lab some time shortly after 11:45?

A. That's correct.

Q. And do I take it then that you confirm Mrs. Bell's evidence with respect to the time at which she thought you passed her on the way to the echo lab with Justin Cook, which is at or shortly before 12 midnight?

A. Yes.

Q. Now, insofar as the administration



1
2 of gentamicin by Mrs. Trayner is concerned at 1
3 o'clock, you indicated that you didn't specifically
4 ask her to give the medication?

5 A. I can't remember, I can't
6 remember, I may very well have asked her to give
7 it.

8 Q. But the thing that did surprise
9 you to some extent was that she brought the medication
10 ticket and the medication down to show you before
11 she administered it?

12 A. That was unusual, yes.

13 Q. So no question that for whatever
14 reason she went out of her way to show you that at
15 1 o'clock what she was doing was giving gentamicin
16 to Baby Miller?

17 A. Yes.

18 Q. And you certainly didn't forget
19 that?

20 A. That she gave the gentamicin?

21 Q. That she came down, went out
22 of her way, came down and showed you that she was
23 giving gentamicin to Allana Miller at 1 o'clock.

24 A. Right.

25 Q. Now we have discussed a little
bit the matter of the meeting at Liz Radojewski's



1
2 house on Monday night, the 23rd of March. I think
3 you got into that a little bit this afternoon in
4 terms of when you began to express that you were
5 happy with an investigation being undertaken. I
6 don't want to get into that meeting in any great
7 detail myself, but I take it as of that night you
8 were certainly aware of the situation regarding
Baby Pacsai?

9 A. Yes.

10 Q. And really a rather extensive
11 investigation underway by that time to determine
12 what happened in that case?

13 A. I knew there was an inquest.

14 Q. You were also aware of the
15 problems that had developed over the weekend in
16 terms of locking up the digoxin, and the necessity
17 of supervisors being on the ward on the Sunday and
Monday?

18 A. I was informed of that.

19 Q. To supervise the administration
20 of medication?

21 A. Yes.

22 Q. So as of the Monday night you
23 were aware of a rather extensive serious
24 investigation, or several parallel ones, that were
25



1
2 taking place into digoxin, and at least the death
3 of Baby Pacsai. At that point in time I think you
4 indicated that your position that you expressed
5 that night was that you welcomed this investigation
6 because it was going to get to the bottom of what
7 was happening?

8 A. I think I have to say that I
9 did not link the investigation. I don't recall that
10 I linked the investigations. I looked at, I knew
11 that there was an inquest into Kevin Pacsai. I
12 knew that the digoxin had been made a controlled
13 drug, but I also knew that it had gone down to the
14 lab, had been examined and had been brought back up
15 to the floor and told that it was all right.

16 Q. When did you find out that?

17 A. On the Saturday night. I knew
18 there was an investigation, because in terms of
19 looking at the intravenouses and what not of Justin
20 Cook, which I thought of as, that they were checking
21 whether in fact what those intravenouses said they
22 were they actually were. In other words we had made
23 up, I know during that arrest a specific, I believe
24 it was an imuran drip, not imuran, I am sorry, it
25 was some kind of drip and we had actually had to
prepare that solution, and it was my feeling that



1
2 they were checking whether in fact what was labelled
3 on that was what was in the bag.

4 Q. You also were aware that the
5 inquest into Kevin Pacsai was an inquest into a
6 death where the child had died with a tremendous
7 level of digoxin in his blood?

8 A. Right.

9 Q. So do I take it from what you
10 are saying is, that you can't recall, but you may
11 have put together the fact that digoxin was involved
12 in Kevin Pacsai's death with the events of the weekend,
and viewed that as one investigation?

13 A. I did not, I did not link them.

14 Q. You did not for sure?

15 A. I did not link them.

16 Q. In any event as of that night
17 your position was you welcomed this investigation?

18 A. Right.

19 Q. As something that would get to
20 the bottom of what happened in Kevin Pacsai's death?

21 A. Right.

22 Q. And you were certainly relieved
23 that that was going to be done?

24 A. That there was an inquest into
25 Kevin Pacsai?



1

6

2

3

Q. That there was going to be
an investigation or an inquest into it?

4

5

A. The baby had died with a high
level of digoxin, yes.

6

7

Q. You had prepared by that
time, your notes?

8

9

A. Yes.

10

11

12

Q. With respect to that?

A. Yes.

Q. And so you were as of that
night ready to proceed with that inquiry and co-
operate and get to the bottom of it?

13

14

15

16

A. Right.

Q. Now, I am aware of the time
and I can finish up relatively shortly here if you
will permit me to, I may go a few minutes beyond
4:30.

17

18

THE COMMISSIONER: Oh yes. Oh no,
that's fine.

19

20

21

22

23

24

25

Q. Now my friend Mr. Sopinka
took you through your whereabouts during the period
in time in August, September, and October of 1981
after you were arrested and charged. You have dealt
with your whereabouts at the relevant time there.
I want to ask you some questions about your knowledge



Nelles, cr.ex.
(Hunt)

7

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

as to certain pieces of information about Phyllis Trayner, I think some of them have already been asked and some have not. I will just review with you what I understand that you are saying. That is, first of all you didn't know where Phyllis Trayner lived?

A. I did not know her address, no. I had an idea where, what part of town she lived in.

Q. You didn't know where her husband worked?

A. I knew that he was an accountant, I knew that he was in the Army or had something to do with the Army Reserve but I did not know specifically where he worked.

Q. You didn't know where he was stationed in the Army?

A. I knew that he had gone to Camp Borden on a couple of occasions.

Q. You didn't know anything about any Armories where he may work out of here in Toronto?

A. No, I did not.

Q. You didn't know his Rank?

A. No, I did not.

Q. Or how he would be described



1

8

2

when his Rank was used?

3

A. No, I didn't.

4

Q. Now I want to just ask you

5

to listen to something I am going to read to you.

6

It is from the evidence of Phyllis Trayner given

7

at the Preliminary Inquiry with respect to where she
did her banking, and I will ask you some questions.

8

It is Volume 5, Mr. Commissioner, page 1088, and

9

she was in cross-examination by Mr. Cooper and at

10

about line 8:

11

"Q. So to your knowledge Susan Nelles
would have no idea where you did your
banking from anything you knew, isn't
that true?

12

13

14

A. I think she probably - she may have
known because I was having problems
getting my money from one bank the
Hospital was putting it into and trying
to get it to my branch and that was
talked about on the floor with the
girls.

15

16

17

18

19

20

Q. All right. Would you have discussed
where your branch was located?

21

22

A. Yes, I did.

23

Q. And who your manager was?

24

25



1

2

"A. Not who the manager was, no.

3

4

Q. Not who the manager was. So that any of the girls on the floor would have known then where you did your banking?

5

6

A. Yes.

7

Q. Is that right?

8

A. That's correct."

9

10

11

12

Now, I should indicate in fairness to you that passage was put to Janet Brownless, who indicated that she had never heard any discussion by Phyllis Trayner with her, or anyone else, about where she did her banking, and I ask you the same question, was that a topic that was ever discussed with you by Phyllis Trayner?

13

14

A. No, it was not.

15

16

17

18

Q. Did you ever hear her discussing with any other of your colleagues on the floor any question about her banking, of where she banked, her banking routines or any problems she was having?

19

A. No, I did not.

20

21

Q. So can I take from that that you know nothing about her branch, what bank she dealt with, where it was located?

22

A. No, I didn't.

23

24

25

Q. Now I just want to conclude



1
2 by asking you again to look at Exhibit 383 which is
3 the chart which has been prepared. Now, as you are
4 well aware the deaths of the babies were listed down
5 the left hand side and the deaths counted there are
6 the deaths that are rated as suspicious deaths by
7 the Atlanta Group that enquired into them.

8 It has been pointed out to you how
9 many of these deaths involved you in a direct sense,
10 inasmuch as you were either caring for the child;
11 you were team leader on that particular occasion;
12 and I think Mr. Lamek indicated that of 15 deaths
13 on Ward 4A that you were present for, you were either
14 caring for the child or were the team leader on all
15 but one occasion?

16 A. Of the 29 here?

17 Q. No, of the 15 deaths that
18 occurred on Ward 4A that you were present for, you
19 were either caring for the child, or were the team
20 leader on 14 of those 15 occasions, I think the one
21 exception being Baby Thomas. Now it may be that the
22 Commissioner will find --

23 A. I am sorry I am a bit confused.
24 We are looking at all 29?

25 Q. Well, we are looking at all
26 29.



1

11

2

A. I don't know what you mean
in terms of the 15.

3

4

Q. All right, let's start again.
It was a question Mr. Lamek put to you yesterday.

5

6

A. I am sorry I don't understand
the question.

7

8

Q. There are 29 deaths listed
here, you were on duty for 22 of them.

9

10

11

12

13

14

A. Right.
Q. Phyllis Trayner was on duty for
all 29 of them and you for 22 of them. Some of them
occurred on 4A and some of them occurred on 4B. We
know that you were assigned to the child that died,
to look after the child, on 12 occasions out of the
29.

15

16

17

18

A. Right.
Q. We also know that you were
team leader on three occasions where the children
died that are listed here.

19

20

21

22

23

24

25

So I am suggesting to you that in
terms of the direct involvement with the children
that died in the sense of either being assigned to
care for them, or being a team leader on the night
when those deaths occurred, you were directly involved
in that sense. That is all I mean by that, in that



1
2 sense in 15 of the total number of 29 deaths.

3 A. Right.

4 Q. And in that sense you were
5 directly involved more than any other person?

6 THE COMMISSIONER: Well that's not
7 true, there were 12 of them perhaps.

8 MR. HUNT: That's what I mean.

9 THE COMMISSIONER: The other three when
10 she was team leader, you can't have it both ways.

11 MR. HUNT: All right, let's take the
12 12, I am quite content to take the 12.

13 Q. In terms of just the children
14 that you were responsible for caring for, 12 of
15 those children who died out of these 29 and that
16 is many more than any of the other nurses had
17 assigned to them that were unfortunate enough to
18 have died.

19

20

21

22

23

24

25

26

27



II-1

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q. Now, Mr. Lamek refined it somewhat further yesterday and he said, look, 15 of these deaths that you were present for occurred on Ward 4A, which was your basic ward, and of the 15 that occurred there you were involved in the sense I'm using it in 14 of them in the sense in 12 of them you were assigned to care for them - I'm sorry 11 of them you were assigned to care for them and three of them you were the team leader.

A. And I was only not there in one?

Q. On 4A.

A. Okay.

Q. All right. Does that come as a surprise to you?

A. I don't think that's correct. I think that I can think of at least a couple that --

Q. Yes, that's what I have said, of the 15 for which you were there.

A. Okay.

Q. All right. Have you got it now?

A. Yes.

Q. My point being here that in terms of this involvement or apparent involvement by virtue of caring for the children or being the team leader you are touched by that more than any other nurse.



II-2

1

2

Understand where I'm at right now?

3

A. Yes.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q. All right. I'm saying to you

that it may be that the Commissioner will find that
all of these 29 children were intentionally killed.

Now, assuming that and looking at your own position
here and accepting that you have said that you have
no responsibility for any of these deaths, does it
cross your mind that someone may have been trying to
discredit you and your abilities by virtue of the
number of children whose deaths touched you directly
in the sense we have discussed?

A. Are you asking me in retrospect
or are you asking me at the time?

Q. I'm asking you that right now.

A. All right. That thought has
occurred to me, yes.

Q. And would you agree with me that
if someone wanted to discredit another nurse and
discredit by casting a bad reflection on her ability
to care, that there would be no better way of doing
that than by intentionally killing babies who were
assigned to that nurse to care for them?

A. I don't know.

O. It's pretty hard to think of a



II-3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

worse way of doing it, isn't it?

A. My mind doesn't like to think
that way I guess.

Q. I appreciate that.
Thank you, those are all the questions
I have.

THE COMMISSIONER: Yes, all right,
thank you.

Mr. Percival I won't call on you but
have you any better idea now as to how long you will
be?

MR. SOPINKA: He has undertaken to
finish in the morning.

MR. PERCIVAL: I hadn't realized
that - like Pinochio, yes, in the morning.

THE COMMISSIONER: Finished in the
morning.

Mr. Roland, how long will you be?

MR. ROLAND: I will be very short.

THE COMMISSIONER: Miss Kitely?

MS. KITELY: Perhaps half an hour,
Sir.

THE COMMISSIONER: Miss Chown, how
long will you be?

MS. CHOWN: About 10 minutes.



1

2

THE COMMISSIONER: 10 minutes.

3

4

MS. CRONK: Sir, I am having
difficulty hearing you.

5

6

7

8

THE COMMISSIONER: Oh. Oh, yes,
I wonder if we could ask everyone. We will all
be able to get out of here very shortly. Mr. Olah,
how long will you be?

9

10

11

12

MR. OLAH: I would expect to be
very short, Mr. Commissioner.

13

14

15

16

17

18

19

20

21

22

23

24

25

THE COMMISSIONER: Mr. Labow?

MR. LABOW: I would expect to
be at least an hour, Mr. Commissioner, maybe two.

THE COMMISSIONER: Mr. Shinehoft?

MR. SHINEHOFT: I don't expect to
be that long, Mr. Commissioner, but I have a
problem that I will be unable to be here on Monday
and my request --

MR. TOBIAS: I can solve
Mr. Shinehoft's problem because I can't be here
tomorrow afternoon and I can be here on Monday
morning.

THE COMMISSIONER: I don't think
there is any real purpose in sitting on Friday.
I can't guarantee that we will be finished even if
we do sit on Friday and I think most of our



1
2 accommodation problems are getting themselves
3 resolved.

4 So, I just suggest to you that those
5 who cannot be here on Monday - first of all, I
6 understand Mr. Sopinka has a problem early Monday
7 morning, so, we probably won't start until 11 o'clock.
8 Is that okay?

9 MR. SOPINKA: Yes.

10 THE COMMISSIONER: So, we probably
11 won't start until 11 o'clock on Monday and that
12 might be very helpful to Mr. Shanahan for one
13 person I can think of and it will also make time --
14 you can't come on Monday anyway?

15 MR. SHINEHOFT: No, I cannot,
16 Mr. Commissioner.

17 THE COMMISSIONER: So, try to
18 sort out your lives so that those who cannot be
19 here on Monday will be able to cross-examine
20 tomorrow and then we won't have a reply in any
21 event before 11 o'clock and we won't have anything
22 before 11 o'clock on Monday.

23 But until 10 o'clock tomorrow
24 morning.

25 ---Whereupon the hearing adjourned at 4:40 p.m.
until Thursday, April 5th, 1984 at 10:00 a.m.

